(25,893)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1916.

No. 1063.

UNION TANK LINE, PLAINTIFF IN ERROR,

vs.

WILLIAM A. WRIGHT, COMPTROLLER GENERAL OF GEORGIA.

IN ERROR TO THE SUPREME COURT OF THE STATE OF GEORGIA.

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a In the Supreme Court of Georgia.

UNION TANK LINE COMPANY

vs.

WM. A. WRIGHT, Comptroller General.

1 STATE OF GEORGIA,
County of Fulton:

Be it remembered that on the 7 day of October, nineteen hundred and fifteen, there came on to be heard and was heard, in the Superior Court of Fulton County, Georgia, the case of Union Tank Line Company, as plaintiff, vs. William A. Wright, as Comptroller General of Georgia, defendant, the Honorable George L. Bell, one of the Judges thereof, then and there presiding. The defendant above named had filed his demurrer to the petition of the complainant, which demurrer was on the 28th day of August, 1914, by the Court overruled. The case was tried by agreement of counsel on the 28th day of August, 1914, at the July term, 1914, of the Superior Court, before the Judge without a jury, by agreement of counsel. No evidence was introduced. The case was submitted upon the agreed statement of facts hereinafter set forth and resulted in a decree in favor of the plaintiff, enjoining the defendant from levying any of the taxes complained of in said petition. The said case was carried upon Writ of Error to the Supreme Court of Georgia to the October Term, 1914. The decision of the Court below was affirmed, so far as the same enjoined the assessment and collection of any franchise tax, but reversed in so far as it enjoined the defendant from collecting the remaining taxes demanded by him and complained of. Remittitur was sent down to this Court and has been filed and made the judgment of this court and the case came on for further hearing in accordance with said decision of the Supreme Court. Whereupon the same, upon an agreement of opposing counsel was again submitted to the Judge without a jury at the present September Term of the said Superior Court. No evidence was introduced but the case was submitted upon the petition and answer and the following agreed statement of facts, to-wit:

The plaintiff, Union Tank Line Company, is a corporation created and existing under the laws of the State of New Jersey, for the
2 purpose and with the powers of owning cars, known as tank cars, specially adapted for transporting oils and other like fluids, which is engaged in the business of renting the same to shippers who desire the use thereof for loading their products of oils and other like fluids therein in order to ship the same and have them transported by the several Railroad Carriers with whom said shippers may contract for such service.

Plaintiff is not engaged itself in the business of transportation, nor does it handle any of the commodities transported either to load or unload, or to move the cars or to handle them in any way, and simply furnishes cars to shippers with whom it has existing contracts to so furnish same. It receives a rental on said cars proportional to the size and capacity of each car which is paid by the shipper for each car used. Plaintiff also receives from the Railroad over which such cars are carried three fourths of a cent a mile for each mile that the car is moved while moving on the lines of the railroads.

Plaintiff has not now and never has had any agent or agency or place of business or office of any sort in the State of Georgia and does no business itself in this State. Plaintiff has no relation to or connection with any business done by any one else in Georgia and does not exercise any franchise in said State, save only as it may be construed or held by the Court to do any of the said things by virtue of the contract set out in this statement between plaintiff and the Standard Oil Company, of Kentucky.

Plaintiff has made no contract in the State for the furnishing of cars therein or for sending them in to said State. Plaintiff's business office is located in the City and State of New York, and through said office it has made a contract with the Standard Oil Company of Kentucky, a corporation of the said State of Kentucky, with its chief office in the city of Louisville, to furnish said oil company cars for use in transportation of oils and like fluids from its depots in Georgia and other States to such points in or out of said State as it may
3 desire to ship such oils. Said Standard Oil Company has deposits at Savannah, Georgia and Jacksonville, Florida. The oils are brought to said depots chiefly in vessels by sea and not in plaintiff's cars. All cars used in Georgia are those which come to said depots at Jacksonville or Savannah and a few coming into Georgia bringing oil to said Standard Oil Company. The cars of plaintiff are only temporarily in said State in order to comply with its contract of rental thereof made outside of Georgia and are not otherwise used in connection with any business being conducted by plaintiff in said State and are not permanently in said State but pass in and out thereof.

Said contract between Plaintiff and said Standard Oil Company of Kentucky was made through the New York and Louisville offices of said Companies, and was executed in the State of Kentucky, and is for the furnishing of cars on rental as herein stated, to be furnished said Standard Oil Company at its several depots, embracing a large number of depots outside of Georgia, as well as said Savannah, Georgia, and Jacksonville, Florida, depots. All accounts, settlements and payments under said contract have been, are being, and are to be made in Louisville, Kentucky.

Under said contract plaintiff has had in the State of Georgia during the years 1907 to 1913 inclusive, a number of cars, the average of which in each year were shown by Exhibit "A" to the petition in the case.

Plaintiff's entire collection and its bills are sent out and received outside of the State of Georgia through its New York office, and all

remittances of rental or mileage from Railroad Companies are made to its New York office.

Plaintiff has never considered itself liable to taxation in Georgia and has never heretofore been called upon by an officer of said State or moved against to make any return for taxation.

The defendant, William A. Wright, is Comptroller General of the State of Georgia and has been since prior to 1907 and
4 said defendant never heard of plaintiff company until the 16th day of March, 1914. In the early part of 1914 plaintiff, thinking it might owe to the State of Georgia a return for taxation of the cars assigned to traffic in Georgia, voluntarily took the matter up by correspondence. Messrs. Campbell, Harding, and Pratt, and Alex. C. King, Esquire, represented plaintiff as attorneys in such part of said correspondence as they respectively conducted. Said correspondence is as follows:

Copy.

Campbell, Harding & Pratt,

Counsellors at Law,

43 Wall Street, 43 Exchange Place, New York.

Douglas Campbell.
Edward Harding.
John T. Pratt.

January 22, 1914.

The Comptroller General, Atlanta, Ga.

DEAR SIR: Will you be kind enough to send us several forms of reports required to be made by equipment companies under Section 990, Code Georgia?

Yours truly,
(Signed) CAMPBELL, HARDING & PRATT.

Copy.

January 27, 1914.

Messrs. Campbell, Harding & Pratt, 43 Wall Street, New York.

GENTLEMEN: Your letter of January 22, received. I have no special blanks for the return of equipment companies and hence am sending you the railroad and sleeping car company blanks. The latter will probably best serve for such a company, though you may use your own judgment in the matter.

5 All returns are to be made as of January 1, 1914, and State taxes are required to be paid by September 1st. Returns must be filed in my office on or before March 1st.

Yours very truly,

COMPTROLLER GENERAL.

Copy.

February 25, 1914.

Hon. William A. Wright, Comptroller General, Atlanta, Ga.

DEAR SIR: Will you be kind enough to send us further forms for reports to be made by equipment companies under Section 990, Code of Georgia, 1911? The blanks for the returns of sleeping car companies, which you sent us before, for use by equipment companies seem to provide that the return shall be made some time subsequent to March 1st, which you stated in your letter of January 27th was the proper time for the making of reports for equipment companies.

Yours truly,

(Signed) CAMPBELL, HARDING & PRATT.

Copy.

February 28, 1914.

Messrs. Campbell, Harding & Pratt, Counsellors at Law, 43 Wall Street, New York.

GENTLEMEN: Your letter of Feb. 25th received. Up to the present time no equipment company has ever made a return for taxation to the Comptroller General of Georgia, though I am now endeavoring to get a return from one such company and will be glad to receive returns from all others doing business in the State.

No special blanks for equipment companies have ever been prepared. The blanks furnished you were sleeping car company blanks with the words "Sleeping Car Company" crossed out equipment company written in. I am going to have some special blanks
6 printed for equipment companies, having at last located one such company, and will be glad to furnish either you or the company you represent such a blank when same are received from the printer.

They will be like the Sleeping Car Company blanks however. The difference in the printed date on the blanks sent and the date stamped and also mentioned in my letter is due to the fact that the time for making returns has been changed by law since the blanks were printed. All public service *service* corporations returning to the Comptroller General are required to make their returns on or before March 1st of each year and such returns are made as of January 1st. In other words, all property owned on January 1st of each year must be returned for taxation and such return must be filed on or before March 1st.

If you will kindly furnish me the name of the equipment company you represent, I will mail blanks as soon as I get them from the printer. Blanks are always furnished to known corporations in ample time to make their returns. I, of course, can not furnish blanks to corporations of whose existence I do not know. The Blanks are furnished as a matter of convenience, of course, but my failure

to send blanks to some company of which I never heard in no way relieves such a company from making a return. Such a company, in the eyes of the Georgia law, is a defaulter.

Yours very truly,

COMPTROLLER GENERAL.

The Tax Return from the Union Tank Line Company received March 16, 1914. Until this return was received the Comptroller General had never heard of such a company. Return made on Sleeping Car Company blank. Following accompanied returns:

7 (Copy.)

New York, March 12, 1914.

Comptroller General, State of Georgia, Atlanta, Ga.

DEAR SIRS: We are enclosing herewith annual return of the Union Tank Line Company for the year ending December 31, 1913.

Kindly acknowledge receipt of same in the enclosed stamped envelope, and oblige,

Yours very truly,

(Signed) WM. H. HUTCHINSON.

Here follows Tax Return of 1913.

Extract.

Name of Company: Union Tank Line Company.

Value of Real Estate owned by Company in or out of Georgia: None.

Number of Miles of R. R. Lines in Georgia over which Sleeping Cars are run: 697 1/2.

Total Value of Sleeping or Palace Cars and all other Cars and Equipment, and all other personal property: $10,518,333.16.

Value Franchise: No Franchise.

Total Number of Miles R. R. Lines over which Sleeping Cars are run: 251,999.

Total Value of property Taxable in Georgia: $47,310.00.

Union Tank Line Company had an average of 57 tank cars in Ga. during 1913 which at a value of $830.00 per car equals—

Tax: $47,310.00.

NEW YORK COUNTY,
New York State, ss:

Personally appeared before me a Notary Public in and for said State, and County, Wm. H. Hutchinson, the treasurer of said Company, who, being duly sworn, deposeth and saith that the above and foregoing is a true and correct return of the mileage and value of property specified, on behalf of said Company doing business in the State of Georgia.

8 (Signed) WM. H. HUTCHINSON,
Treasurer of Union Tank Line Co.

Sworn to and subscribed before me this 12th day of March, 1914.

[SEAL.] ELMO L. GRIDLEY,
Notary Public.

Filed in Comptroller General's office March 16, 1914.

(Copy.)

March 16, 1914.

Mr. Wm. M. Hutchinson, V. P. & Treasurer, Union Tank Line Company, 26 Broadway, New York.

DEAR SIR: I acknowledge receipt of your letter of March 12th together with enclosure of the 1914 returns of the Union Tank Line Company. You refer to the return as for the year ending December 31, 1913, but the return is for taxation this year, though the mileage figures of course have to be based on the previous year's business.

Returns should of course also be made for back years, as this is the first year your Company has ever made a return for taxation. Unfortunately, our courts have held that back taxes can be collected for only seven years. I, therefore, formally call upon you to make returns for the years 1907, 1908, 1909, 1910, 1911, 1912, 1913. Special blanks are now being prepared for "Equipment Companies" and I will Mail you a supply for the years mentioned within the next few days—just as soon as they are recieved from the printer.

As to the return filed, you have furnished the data desired, but have made an error in the application of same. After giving the mileage for the Company everywhere and for Georgia, you then go ahead and assign 57 tank cars for this State and value them at $830.00 each, making the total for Georgia, $47,310. This is an incorrect method. If you were to be allowed to merely assign so many cars to the State for taxation there would be no need for the mileage figures to be furnished.

9 The valuation to be assigned to Georgia must be in the same proportion to the valuation for the entire company, as the mileage in Georgia bears to the entire mileage everywhere. Thus, 251,999: 6,976: $10,518,333: —?

The $10,518,333 multiplied by 6,976.5 gives 73,381,150,174.5, which divided by 251,999 gives $291,196—the proper valuation to be assigned to Georgia.

Or to work it out by percentage instead of proportion: 6,976.5 the Georgia mileage, is 2.76846 per cent. of 251,999, the entire mileage. Georgia is therefore entitled to 2.76846 per cent. of the entire valuation. This per cent. of $10,518,333 is $291,195.84, or the same sum arrived at by proportion, if we call the 84 cents an even dollar. Unless decimals are extended almost indefinitely, there is of course always this slight difference.

The correct valuation for Georgia of your physical property is

therefore $291,196—under the return you have made. A Franchise value should also be returned. And whatever the valuation you place on the franchise for the entire country, 2.76846 per cent. of same must be assigned to Georgia. Thus, if you should value your franchise at $1,000,000, the franchise value to be assigned to Georgia would be $27,685.

Please let me hear from you in regard to the franchise. The returns for the seven back years you need not bother with until you receive the blanks mentioned in the foregoing.

Yours very truly,

COMPTROLLER GENERAL.

Nothing heard further and assessments made on April 7, 1914.

Physical property assessed at $291,196 and Franchise at $27,685, franchise valuation being doubled as prescribed in Section 8 of the Act of 1902, making total valuation for each years 1914-1907 inclusive, $346,566.

Same day following letter sent:

(Copy.)

April 7, 1914.

Mr. Wm. H. Hutchinson, V. P. & Treasurer, Union Tank Line Company, 26 Broadway, New York City.

10 DEAR SIR: I have this day assessed the property of your company in Georgia, both tangible and intangible, at a total valuation of $346,566, for taxation for the years 1914, 1913, 1912, 1911, 1910, 1909, 1908, and 1907. Under the law you have twenty days from this date in which to decide whether to accept this valuation, or to submit to arbitration the question of the value of your company's property.

Unless within twenty days you notify me of your intention to arbitrate and also furnish me with the name of your arbitrator, the assessments will stand.

Yours very truly,

COMPTROLLER GENERAL.

(Copy.)

New York, April 15, 1914.

Hon. William A. Wright, Comptroller General, State of Georgia, Atlanta, Ga.

DEAR SIR: We acknowledge receipt of your letter of the 7th inst., stating that you have assessed this company in your State at $346,566 for the years 1907-1914 inclusive.

Will you be so kind as to inform us whether this assessment of $346,566 is for each of the years designated, or merely the total assessment for all of such years? If the latter, can you also give us

the separate valuation for each year, stating separately the "franchise value" for each of those years?

We would also appreciate it if you can tell us what the amounts of the taxes on these assessments are and when payable?

Yours very truly,

(Signed) WM. M. HUTCHINSON.

11 (Copy.)

April 17, 1914.

Mr. Wm. M. Hutchinson, V. P. & Treasurer, Union Tank Line Company, 26 Broadway, New York City.

DEAR SIR: Your letter of April 15th received. The assessment of $346,566 is each of the years mentioned in my letter of the 7th inst. The tangible property of your company is assessed as $291,196, and the franchise at $27,685. The valuation for the franchise, however, had to be doubled because of your refusal or failure to return a franchise, which makes the aggregate $346,566 as stated.

The valuation for Georgia was determined by taking 2.76846 per cent of the valuation you gave for the entire company, exclusive of franchise. The 2.76846 per cent. is the ratio the Georgia mileage bears to the entire mileage, as explained in a previous letter. The franchise value was obtained by placing your franchise for the entire country at an even million dollars and giving Georgia 2.76846 per cent. thereof.

The taxes on $346,566 for *each of* the years 1907-1913 inclusive comes to $1,732.83, the State rate during all this time having been 5 mills on the dollar, or one half of one per cent. The State tax rate for 1914 has not yet been fixed, but will probably be the same. However, the 1914 taxes are not due until September 1st. If it becomes necessary to issue a fi. fa. for any of these years, then the interest and costs will be added to the taxes.

Yours very truly,

COMPTROLLER GENERAL.

(Copy.)

New York, May 1, 1914.

Hon. William A. Wright, Comptroller General, Atlanta, Ga.

12 DEAR SIR: We acknowledge receipt of your letter dated April 17, 1914, giving us certain information as to the taxes assessed against this company by you.

Will you kindly further inform us as to when the taxes for the years 1907-1913 are due and payable?

Yours truly,

(Signed) WM. M. HUTCHINSON.

(Copy.)

May 4, 1914.

Mr. Wm. M. Hutchinson, V. P. & Treas., Union Tank Line Company, 26 Broadway, New York.

DEAR SIR: I have for acknowledgment your favor of the 1st inst. concerning the date upon which taxes due by on your property for the year- 1907 to 1913, both inclusive, are payable.

In reply, I beg to say that these taxes matured on the 20th of December of each year commencing with 1907 to 1913. They are all therefore, in default, and by paying them without the issuance of an execution you will save interest at the rate of seven per cent. which is required by our statute where executions are issued to enforce the collection of taxes.

Yours very truly,

COMPTROLLER GENERAL.

(Copy.)

In re Taxation of Union Tank Line Co.

May 22, 1914.

Hon. Alexander C. King, Atlanta, Ga.

DEAR SIR: With reference to the claim of the State taxing Union Tank Line Company, a foreign corporation doing business in Georgia, and about which a conference was held on yesterday with yourself, Attorney General Grice and Judge Hart, I beg to
13 advise that on March 16th I acknowledged receipt of the returns for taxation of the above named equipment company for the year 1914. At the same time I requested that the company make a return for the seven years preceding, to-wit: 1907-1913 inclusive. I also directed the company's attention to the fact that its method of calculating the value at which its cars should be returned was incorrect. The valuation to be assigned to Georgia I insisted should be in the same proportion to the valuation for the entire company as the mileage in Georgia bears to the entire mileage traversed by the cars of the company. Based upon this method of computation, which is that provided by the laws of Georgia, the correct valuation of the company's physical property, as evidenced by its return, was $291,196. I further notified the company that its franchise valuation should be $27,685, it having failed to return this item of property for taxation as required by the laws of this State. The company not making the return as requested, on April 7th, I assessed the property for taxation — total valuation (including the penalty imposed for failure to return its franchise value) of $346,566, for the years respectively 1907 to 1914 inclusive. I informed the company that it had twenty days from that date in which to decide whether to accept this valuation or to sub-

mit to arbitration the question, further stating, "unless within twenty days you notify me of your intention to arbitrate, and also furnish me with the name of your arbitrator, the assessment will stand." No exception was taken within the twenty days to the assessment, and it looks to me as if this concludes the question of the valuation of the property.

We understood your position in the conference to be that the Company conceded its liability to taxation of the property, and your complaint was chiefly as to the question of valuation. You did further suggest that you were not clear as to the liability of the franchise to taxation.

The foregoing recital of the history of the case is made because it does not occur to me in the light of the facts that I would have authority to reduce the valuations at which I have assessed
14 the property, and to which valuations no exceptions were made within the time limit, fixed by law.

I regret very much if there has been excessive valuation, but if that be a fact the company alone is responsible. I might add, however, that I do not think from the data submitted there is any excessive valuation of this property for taxation in Georgia.

Yours very truly,

COMPTROLLER GENERAL.

(Copy.)

Taxation—Union Tank Line Company.

May 23, 1913.

Hon. W. A. Wright, Comptroller General, Atlanta, Ga.

My Dear General: I have just received through the mails your letter of May 22nd on the above subject.

I am wholly unable to agree with you as to the statement of what has taken place in regard to the assessment of taxes made by you against the Union Tank Line Company.

The Company has returned that it had 57 cars in Georgia. There has been no complaint on your part that there were any more cars actually in Georgia, but what you have insisted upon is that under the Statute the Company is required to return a certain proportion of its entire physical property regardless of whether in truth and in fact the property ever was in Georgia, and our complaint therefore has been not that you have overvalued the property in Georgia, but that you have valued and assessed for taxation in Georgia property that never was in Georgia, and which Georgia under her own Constitution, and the Constitution of the United States, has no right by Statute or otherwise to tax.

This being so, the questions which you raise on valuation are in no wise concerned, or involved in this case, but the proposition is that the assessment made by the State for taxation embraces nearly three hundred cars that were not within the State and were not subject to be taxed.

This is not a question which would go before an arbitra-
15 tion.

I see no difficulty if the Attorney General and Judge Hart decide that his method of taxation is illegal because it taxes property outside of the State, for us, if you do not desire to take the responsibility alone, to file a bill to the Superior Court of Fulton County, and if we can agree upon the amount, take a decree at the July term of the court, which meets on the first Monday in July, fixing the amount of tax to be paid, the court decreeing upon the admissions of law made by the respective solicitors that that is the proper amount of taxation.

I should be very glad to be able to agree with the State on the matter and am therefore taking the liberty of writing you thus frankly.

Very truly,
(Signed) ALEX. C. KING.

(Copy.)

New York,
May 25, 1914.

Comptroller General, State of Georgia, Atlanta, Ga.

DEAR SIR: Will you not kindly forward five (5) copies of the blanks upon which equipment companies make their Annual Tax Return, in order that we may retain copies in this office of all reports made, and oblige,

Yours truly,
(Signed) WM. M. HUTCHINSON.

(Copy.)

May 27, 1914.

Mr. Wm. M. Hutchinson, Vice President, Union Tank Line Company, 26 Broadway, New York.

DEAR SIR: Enclosed please find blanks (5 copies of each)
16 as requested in your letter of the 26th inst.

Yours very truly,
COMPTROLLER GENERAL.

Blanks mailed May 27, 1914.

On April 7, 1914, when the defendant entered an assessment in his office of property and franchise of the plaintiff as shown hereinbefore, he had no other information for any of the years 1907 to 1914 inclusive than was contained in the said return filed by the plaintiff on March 16, 1914, and embraced in this statement and which was refused by the defendant, and did not know what cars defendant had had in Georgia during any of said named years nor

did he ascertain the value of such cars, but his action was taken on such information hereinbefore shown; and that the assessment so entered by the defendant in his office against the plaintiff's property during said period for each of said years embraces the valuation of about three hundred cars in excess of what the plaintiff actually had in the State of Georgia, during said years of the approximate value of $250,000.00 each year; and that the true value of a tank car is about eight hundred and thirty ($830.00) dollars per car.

That for the year 1914 the assessment entered against plaintiff by defendant covered the value of at least three hundred and fifty cars in excess of the number of cars plaintiff actually had in the State of Georgia for the time said tax was assessed.

That defendant in entering said assessment never undertook to ascertain the actual property of plaintiff's located in the State of Georgia during the said years or to assess its property at its real value for taxation, otherwise than by simply ascertaining the percentage of its entire property shown by the ratio of the railroad traversed by its equipment in Georgia and the railroad mileage traversed by its equipment everywhere as shown by its said return filed on March 16, 1914.

17 That plaintiff took the position that what defendant had done did not amount to an assessment of its property according to law and on May 26, 1914, its counsel, Alex. C. King, Esquire, tendered to the defendant annual tax returns for each of the years 1907, 1908, 1909, 1910, 1911, and 1912, which said defendant retained for inspection and on the 27th day of May, 1914, rejected the same and returned them to the plaintiff's counsel. The original returns so tendered are as follows:

18 Equipment Companies.

Annual Tax Return.

Returns Must be Filed by March 1st of Each Year.

Union Tank Line Company, for the Fiscal Year 1907, Made to the Comptroller-General in Compliance with Section 990, Code of Georgia, 1911.

Railroad Equipment Companies—Any person, or persons, co-partnership, company or corporation wherever organized or incorporated, whose principal business is furnishing or leasing any kind of railroad cars except dining, buffet, chair, parlor, palace or sleeping cars, or in whom the legal title in such cars is vested, but which are operated, or leased, or hired to be operated on any railroads in this State, shall be deemed an equipment company. Every such company shall be required to make returns to the Comptroller-General under the same laws of force in reference to the rolling stock owned by the railroads making returns in this State, and the assessment of taxes thereon shall be levied and the taxes collected in the same manner as provided in the case of sleeping cars in Section 989.

Name of Company: Union Tank Line Company.

Value of all Real Estate Owned by Company In or Out of Georgia	None.
Total value of Cars and Equipments, and all other Personal Property	$9,413,559.43
Total Number of Miles R. R. Lines over which Cars are Run	251,999
Number of Miles of R. R. Lines in Georgia over which Cars are Run	6,976½
Value Franchise	Nothing.
Total Value of Property Taxable in Georgia	$25,730.00
U. T. L. Co. had an average of 31 tank cars in Ga. during 1907 which at a value of $830.00 per car equals, Tax	$25,730.00

STATE OF NEW YORK,
New York County:

Personally appeared before me a Notary Public in and for said State and County, Wm. M. Hutchinson the Treasurer of said Company, who, being duly sworn, deposeth and saith that the above and foregoing is a true and correct return of the mileage and value of property specified, on behalf of said Company doing business in the State of Georgia.

UNION TANK LINE COMPANY
WM. M. HUTCHINSON, *Treasurer.*

Sworn to and subscribed before me this 23rd day of May 1914.
[N. P. SEAL.] ELMO L. GRIDLEY.

19 Equipment Companies.

Annual Tax Return.

Returns Must be Filed by March 1st of Each Year.

Union Tank Line Company, for the Fiscal Year 1908, Made to the Comptroller-General in Compliance with Section 990, Code of Georgia, 1911.

Railroad Equipment Companies—Any person, or persons, co-partnership, company or corporation wherever organized or incorporated, whose principal business is furnishing or leasing any kind of railroad cars except dining, buffet, chair, parlor, palace or sleeping cars, or in whom the legal title in such cars is vested, but which are operated, or leased, or hired to be operated on any railroads in this State, shall be deemed an equipment company. Every such company shall be required to make returns to the Comptroller-General under the same laws of force in reference to the rolling stock owned by the railroads making returns in this State, and the assessment of taxes thereon shall

be levied and the taxes collected in the same manner as provided in the case of sleeping cars in Section 989.

Name of Company: Union Tank Line Company.

Value of all Real Estate Owned by Company In or Out of Georgia	None.
Total value of Cars and Equipments, and all other Personal Property	$10,341,453.05
Total Number of Miles R. R. Lines over which Cars are Run	251,999
These figures are same as for 1913 they being only ones available.	
Number of Miles of R. R. Lines in Georgia over which Cars are Run	6,976½
Value Franchise	Nothing.
Total Value of Property Taxable in Georgia	$26,560.00
U. T. L. Co. had an average of 32 tank cars in Ga. during 1908 which at a value of $830.00 per car equals, Tax	$26,560.00

STATE OF NEW YORK,
New York County:

Personally appeared before me a Notary Public in and for said State and County, Wm. M. Hutchinson the Treasurer of said Company, who, being duly sworn, deposeth and saith that the above and foregoing is a true and correct return of the mileage and value of property specified, on behalf of said Company doing business in the State of Georgia.

UNION TANK LINE COMPANY.
WM. M. HUTCHINSON, *Treasurer.*

Sworn to and subscribed before me this 23rd day of May 1914.
[N. P. SEAL.] ELMO L. GRIDLEY.

20 Equipment Companies.

Annual Tax Return.

Returns Must be Filed by March 1st of Each Year.

Union Tank Line Company, for the Fiscal Year 1909, Made to the Comptroller-General in Compliance with Section 990, Code of Georgia, 1911.

Railroad Equipment Companies—Any person, or persons, co-partnership, company or corporation wherever organized or incorporated, whose principal business is furnishing or leasing any kind of railroad cars except dining, buffet, chair, parlor, palace or sleeping cars, or in

whom the legal title in such cars is vested, but which are operated, or leased, or hired to be operated on any railroads in this State, shall be deemed an equipment company. Every such company shall be required to make returns to the Comptroller-General under the same laws of force in reference to the rolling stock owned by the railroads making returns in this State, and the assessment of taxes thereon shall be levied and the taxes collected in the same manner as provided in the case of sleeping cars in Section 989.

Name of Company: Union Tank Line Company.

Value of all Real Estate Owned by Company In or Out of Georgia	None.
Total value of Cars and Equipments, and all other Personal Property	$10,035,593.02
Total Number of Miles R. R. Lines over which Cars are Run	251.999
These figures are same as for 1913 they being the only ones available.	
Number of Miles of R. R. Lines in Georgia over which Cars are Run	6.976½
Value Franchise	Nothing.
Total Value of Property Taxable in Georgia	$46,480.00
U. T. L. Co. had an average of 56 tank cars in Ga. during 1909 which at a value of $830.00 per car equals, Tax	$46,480.00

STATE OF NEW YORK,
New York County:

Personally appeared before me a Notary Public in and for said State and County, Wm. M. Hutchinson the Treasurer of said Company, who, being duly sworn, deposeth and saith that the above and foregoing is a true and correct return of the mileage and value of property specified, on behalf of said Company doing business in the State of Georgia.

UNION TANK LINE COMPANY.
WM. M. HUTCHINSON, *Treasurer.*

Sworn to and subscribed before me this 23rd day of May 1914.
[N. P. SEAL.] ELMO L. GRIDLEY.

21 Equipment Companies.

Annual Tax Return.

Returns Must be Filed by March 1st of Each Year.

Union Tank Line Company, for the Fiscal Year 1910, Made to the Comptroller-General in Compliance with Section 990, Code of Georgia, 1911.

Railroad Equipment Companies—Any person, or persons, co-partnership, company or corporation wherever organized or incorporated,

whose principal business is furnishing or leasing any kind of railroad cars except dining, buffet, chair, parlor, palace or sleeping cars, or in whom the legal title in such cars is vested, but which are operated, or leased, or hired to be operated on any railroads in this State, shall be deemed an equipment company. Every such company shall be required to make returns to the Comptroller-General under the same laws of force in reference to the rolling stock owned by the railroads making returns in this State, and the assessment of taxes thereon shall be levied and the taxes collected in the same manner as provided in the case of sleeping cars in Section 989.

Name of Company: Union Tank Line Company.

Value of all Real Estate Owned by Company In or Out of Georgia	None.
Total value of Cars and Equipments, and all other Personal Property	$9,809,513.48
Total Number of Miles R. R. Lines over which Cars are Run	251,999
These figures are same as for year 1913 they being the only ones available.	
Number of Miles of R. R. Lines in Georgia over which Cars are Run	6,976½
Value Franchise	Nothing.
Total Value of Property Taxable in Georgia	$42,330.00
U. T. L. Co. had an average of 51 tank cars in Ga. during 1910 which at a value of 830.00 per car equals, Tax	$42,330.00

STATE OF NEW YORK,
New York County:

Personally appeared before me a Notary Public in and for said State and County, Wm. M. Hutchinson the Treasurer of said Company, who, being duly sworn, deposeth and saith that the above and foregoing is a true and correct return of the mileage and value of property specified, on behalf of said Company doing business in the State of Georgia.

UNION TANK LINE COMPANY.
WM. M. HUTCHINSON, *Treasurer.*

Sworn to and subscribed before me this 23rd day of May 1914.

[N. P. SEAL.] ELMO L. GRIDLEY.

22 Equipment Companies.

Annual Tax Return.

Returns Must be Filed by March 1st of Each Year.

Union Tank Line Company, for the Fiscal year 1911, Made to the Comptroller-General in Compliance with Section 990, Code of Georgia, 1911.

Railroad Equipment Companies—Any person, or persons, co-partnership, company or corporation wherever organized or incorporated, whose principal business is furnishing or leasing any kind of railroad cars except dining, buffet, chair, parlor, palace or sleeping cars, or in whom the legal title in such cars is vested, but which are operated, or leased, or hired to be operated on any railroads in this State, shall be deemed an equipment company. Every such company shall be required to make returns to the Comptroller-General under the same laws of force in reference to the rolling stock owned by the railroads making returns in this State, and the assessment of taxes thereon shall be levied and the taxes collected in the same manner as provided in the case of sleeping cars in Section 989.

Name of Company: Union Tank Line Company.

Value of all Real Estate Owned by Company In or Out of Georgia	None.
Total value of Cars and Equipments, and all other Personal Property	$9,949,004.11
Total Number of Miles R. R. Lines over which Cars are Run	251,999
These figures are same as for year 1913, they being only ones available.	
Number of Miles of R. R. Lines in Georgia over which Cars are Run	6,976½
Value Franchise	Nothing.
Total Value of Property Taxable in Georgia	$39,840.00
U. T. L. Co. had an average of 48 tank cars in Ga. during 1911 which at a value of $830.00 per car equals, Tax	$39,840.00

STATE OF NEW YORK,
New York County:

Personally appeared before me a Notary Public in and for said State and County, Wm. M. Hutchinson the Treasurer of said Company, who, being duly sworn, deposeth and saith that the above and foregoing is a true and correct return of the mileage and value of

property specified, on behalf of said Company doing business in the State of Georgia.

UNION TANK LINE COMPANY.
WM. M. HUTCHINSON, *Treasurer.*

Sworn to and subscribed before me this 23rd day of May 1914.
[N. P. SEAL.] ELMO L. GRIDLEY.

23 Equipment Companies.

Annual Tax Return.

Returns Must be Filed by March 1st of Each Year.

Union Tank Line Company, for the Fiscal Year 1912, Made to the Comptroller-General in Compliance with Section 990, Code of Georgia, 1911.

Railroad Equipment Companies.—Any person, or persons, co-partnership, company or corporation wherever organized or incorporated, whose principal business is furnishing or leasing any kind of railroad cars except dining, buffet, chair, parlor, palace or sleeping cars, or in whom the legal title in such cars is vested, but which are operated, or leased, or hired to be operated on any railroads in this State, shall be deemed an equipment company. Every such company shall be required to make returns to the Comptroller-General under the same laws of force in reference to the rolling stock owned by the railroads making returns in this State, and the assessment of taxes thereon shall be levied and the taxes collected in the same manner as provided in the case of sleeping cars in Section 989.

Name of Company: Union Tank Line Company.

Value of all Real Estate Owned by Company In or Out of Georgia	None.
Total value of Cars and Equipments, and all other Personal Property	$9,895,624.71
Total Number of Miles R. R. Lines over which Cars are Run	251.999
These figures are same as for year 1913, they being the only ones available.	
Number of Miles of R. R. Lines in Georgia over which Cars are Run	6.976½
Value Franchise	Nothing.
Total Value of Property Taxable in Georgia	$40,670.00
U. T. L. Co. had an average of 49 tank cars in Ga. during 1912 which at a value of $830.00 per car equals, Tax	$40,670.00

STATE OF NEW YORK,
New York County:

Personally appeared before me a Notary Public in and for said State and County, Wm. M. Hutchinson the Treasurer of said Company, who, being duly sworn, deposeth and saith that the above and foregoing is a true and correct return of the mileage and value of property specified, on behalf of said Company doing business in the State of Georgia.

UNION TANK LINE COMPANY.
WM. M. HUTCHINSON, *Treasurer.*

Sworn to and subscribed before me this 23rd day of May 1914.
[N. P. SEAL.] ELMO L. GRIDLEY.

24 The foregoing returns tendered by the plaintiff and rejected by the defendant embrace the full number of cars in said State belonging to the plaintiff for each of said years at their full value and the same are embraced in the Schedule "A" referred to and the plaintiff has during each of said years had no other property in the State of Georgia and has paid the defendant the taxes on said valuation given in said Exhibit "A," and in said returns so tendered and refused for each of said years at the rate of five mills for each year, being the rate for such year with all interest due in connection with each tax or proceeding taken thereon. Such payment being made on an agreement that the same is without prejudice to the right of the defendant to demand and the plaintiff to deny and resist the payment of the further taxes set forth as demanded by said defendant.

The defendant is demanding the sum as taxes set forth in the petition including a demand from plaintiff of a franchise tax on the sum of $27,685.00 per year for each of the seven years above stated as the value of a taxable franchise in Georgia and further insists that because the same has not been returned for taxation in said years that plaintiff must pay on twice the amount of said sum for each year and has notified plaintiff that defendant will issue executions against it for tax at the rate of five mills on said sums assessed by him both for taxes on equipment and franchise tax, the last being doubled, besides interest and costs, and that he will cause the property of plaintiff to be levied upon and seized in the State of Georgia and will sell the same to coerce the payment of said claims. That unless defendant is enjoined from so doing, he will issue separate executions against the plaintiff for each of said years and will cause the same to be levied on the plaintiff's tank cars in said State from time to time.

The amount of the franchise tax so attempted to be assessed against plaintiff was not reached by ascertaining or valuing any franchise exercised by plaintiff in the State of Georgia, but the same was arrived at by estimating the plaintiff's entire fran-

chise at one million ($1,000,000.00) dollars and by taking the same percentage of 2.76%, the average between the track mileage traversed by all of its cars in Georgia, and the track mileage traversed by all of its cars and estimated such percentage of its total franchise value, as being subject to taxation in Georgia, in the same way as shown in the letter from defendant dated March 16, 1914, to W. M. Hutchinson, Vice President of the plaintiff hereinbefore set out.

(Signed) KING & SPALDING,
Petitioner's Attorney.

(Signed) WARREN GRICE,
Attorney General of Georgia.

At the conclusion of the argument, the court found and adjudged, as set forth on the decree rendered on the 7 day of October, 1915, enjoining said defendant from assessing or collecting any franchise tax, but refusing to enjoin the defendant further.

The said Union Tank Line Company, who was plaintiff in error in this Bill of Exceptions, comes now within the time allowed by law and files this its Bill of Exceptions and says that the court erred in rendering so much of the decree last mentioned as refused to enjoin the defendant, William A. Wright, as Comptroller General of Georgia, from the attempted assessment of two hundred and ninety-one thousand, one hundred and ninety-six ($291,196.00) dollars for the years 1907 to 1914 inclusive, and in not granting the injunction against such assessment, and the collection of taxes thereon, as prayed in said petition and complaint and for grounds of exception to, and error in such ruling, this plaintiff in error says:

That the court erred in not enjoining said attempted assessment for each of said several years and upon the amount of said assessment of two hundred, ninety-one thousand, one hundred and ninety-six ($291,196.00) dollars for each of said years from 1907 to 1914 inclusive, because the facts in said case show that the levying of said assessment for said amount embraces therein the value of at least three hundred and fifty (350) cars, in each year, in excess of the number of cars plaintiff actually had in the State of Georgia for the time said tax was assessed and that such assessment and the collection of taxes thereon assesses and collects taxes upon property not subject to taxes in the State of Georgia, and takes the property of this plaintiff in error without due process of law and denies to this plaintiff in error the equal protection of the law, in violation of the fourteenth amendment of the Constitution of the United States of America.

Because the facts of said case show that the said William A. Wright, as Comptroller General, did not attempt to ascertain, nor did he ascertain, what property of the plaintiff was in the State of Georgia, upon the dates and during the time fixed for the assessment of property in each of the years 1907 to 1914 inclusive, nor did he assess said sum of two hundred and ninety-one thousand one hundred and ninety-six ($291,196.00) dollars in each of said years upon

any ascertainment or attempt to ascertain the value of the property of defendant actually in the State of Georgia, but the said assessment was made solely by the application of the percentage between the number of miles of railroad track in the State of Georgia traversed by cars of the Union Tank Line Company as compared with the total number of miles of railroad track traversed by the cars of the Union Tank Line Company everywhere. The facts of this case show that such assessment in each of said years and the levy of taxes upon such assessment had the effect of levying taxes upon at least three hundred (300) cars of the value of eight hundred and thirty ($830.00) dollars per car, more than the average number of cars of the Union Tank Line Company in said State during each of said years respectively, which said action of the said Comptroller General and said assessment was a taking of the property of the said Union Tank Line Company without due process of law and was a denial to it of equal protection of the law in violation of the fourteenth amendment of the Constitution of the United States.

27 Because, the Statute of the State of Georgia under which the Comptroller General has assessed the property of the Union Tank Line Company in the State of Georgia, for each of the years 1907 to 1914 both inclusive, at the sum of two hundred and ninety-one thousand, one hundred and ninety-six ($291,196.00) dollars, is unconstitutional and void, under the fourteenth amendment of said Constitution of the United States, and has the effect of taking the property of the said Union Tank Line Company without due process of law and denying to it the equal protection of the law, because the said Statute requires the Comptroller General of the State of Georgia to fix as the property of the tax payer the percentage of its entire property that is shown by the ratio between the number of miles of railroad track located in Georgia traversed by the cars of the tax payer with the total number of miles of railroad track elsewhere traversed by such taxpayer and to fix as its value a like percentage of its entire property wherever situated, while said Statute does not provide any method by which any property can be excepted or by which the tax payer is permitted to show that this method of assessment for taxation has the effect of taxing much more of the property of the tax payer than is located in the State of Georgia and has the effect of taxing property located out of the State of Georgia when such is the case and that, therefore, it denies to the said taxpayer and does and did deny to this plaintiff in error, the equal protection of the law and took the property of this defendant without due process of law and is in violation of the fourteenth amendment of the Constitution of the United States.

For each of which reasons above stated this plaintiff in error says that the court erred in passing the decree above mentioned, refusing the injunction prayed for as to assessment and collection of taxes on its property as aforesaid, and assigns error thereon for each of the causes above stated.

William A. Wright, as Comptroller General is named as defendant herein.

And now within thirty days after the decision complained
28 of, comes the Union Tank Line Company, plaintiff in error and presents this its Bill of Exceptions and prays that the same be certified as such.

It designates as those portions of the record material to a clear understanding of the errors complained of: First, the petition in said case; second, the demurrer therein; third, the answer; fourth, the decree of the court rendered at the October Term, 1915. It prays that this, its Bill of Exceptions, be signed and certified that the errors complained of may be examined and corrected.

This 7 day of October, 1915.

KING & SPALDING,
Attorneys for Union Tank Line Company, Plaintiff in Error.

Address: Atlanta, Ga.

29 GEORGIA,
Fulton County:

I do certify that the foregoing Bill of Exceptions is true and contains all the evidence, and specifies all of the record material to a clear understanding of the errors complained of; and the Clerk of the Superior Court of Fulton County is hereby ordered to make out a complete copy of such parts of the record in said case as are in this Bill of Exceptions specified and certify the same as such and cause the same to be transmitted to the October Term, 1915, of the Supreme Court, that the errors alleged to have been committed may be considered and corrected.

This 7th day of October, 1915.

GEO. L. BELL,
Judge Superior Court, Atlanta Circuit.

Service of the foregoing bill of exceptions is acknowledged, further service and copy waived. This October 16th, 1915.

CLIFFORD WALKER,
Attorney General and Attorney for William A. Wright, Comptroller General.

(Endorsed:) No. 31473.
Supreme Court of Georgia.
Union Tank Line Company, Plaintiff in Error, vs. Wm. A. Wright, Comptroller General of Georgia, Defendant in Error.
Campbell, Harding & Pratt, King & Spalding, Attys. for Plff. in Error.
Filed in office, this the 16 day of Oct. 1915. Arnold Broyles, Clerk.

30 GEORGIA,
Fulton County:

I Hereby Certify, That the foregoing Bill of Exceptions, hereunto attached, is the true original Bill of Exceptions in the case stated,

to-wit: Union Tank Line Company, Plaintiff in Error, vs. Wm. A. Wright, (Comptroller Genl.), Defendant in Error, and that a copy hereof has been made and filed in this office.

Witness my signature and the seal of Court affixed this the 2 day November, 1915.

ARNOLD BROYLES,
Clerk Superior Court Fulton County, Georgia,
ex-Officio Clerk City Court of Atlanta.

(Endorsed:) Case No. 4.
Supreme Court of Georgia, Atlanta Circuit, March term, 1916.
Union Tank Line Co., Plff. in Error, versus Wm. A. Wright (Comptroller Genl.), Deft. in Error.
Bill of Exceptions.
Filed in office 16th October, 1915. Arnold Broyles, Clerk.
Filed in office No. 3, 1915. W. E. Talley, D. Clerk.

31 (*Petition.*)

Fulton Superior Court.

No. 31473.

UNION TANK LINE COMPANY

vs.

WM. A. WRIGHT, Comptroller Genl.

Union Tank Line Company, (hereafter styled Plaintiff) avers that it is a corporation created and existing under the laws of the State of New Jersey, and brings this, its petition against William A. Wright, whom it avers to be a citizen of the State of Georgia, residing in the City of Atlanta, in said Fulton County, and who is Comptroller General of the State of Georgia, hereinafter styled defendant.

2. Plaintiff is a corporation chartered as aforesaid for the purpose of owning cars, known as tank cars, specially adapted for transporting oils, and other like fluids—and is engaged in the business of renting the same to shippers who desire to obtain the use of said cars for the loading thereon of their products of oil and like fluids in order to ship the same and have them transported by the several railroad carriers with whom said shippers may contract for such services.

3. It is not engaged itself in the business of transportation. It does not handle the commodities transported either to load or unload or to move the cars or handle them in any way but simply furnishes cars to the shippers with whom it has existing contracts to so furnish cars.

32 4. It receives a rental on said car proportioned to its size and capacity which is paid by the shipper for each car used; it also receives from the railroad over which such cars are carried ¾

of a cent a mile for each mile that the car is moved while moving on the line of the railroad.

5. Plaintiff shows that it has no agent, or agency, or place of business or office of any sort in the State of Ga. and does no business in said State.

6. It has made no contract in this State for the furnishing of cars therein or for sending them into said State.

7. Plaintiff's business office is located in the City of New York, State of New York, and from and through said office it has made a contract with the Standard Oil Company of Kentucky, a corporation of said State of Kentucky, with its chief office at the City of Louisville in Kentucky to furnish to it cars for use in transporting oils or like fluids, (all hereinafter styled oils) from its depots in Georgia and other states to such points in or out of said State, as it may desire to ship said oils. Said Standard Oil Company has depots at Savannah, Georgia, and Jacksonville, Florida. The oils are brought to said depots chiefly by Sea in vessels, and not in plaintiff's cars. All cars used in Georgia are those which come to said Jacksonville or
33 Savannah depots, and a few coming into said state bringing oil to said oil company.

8. Plaintiff shows that a contract was made between said Standard Oil Company of Kentucky and plaintiff through the New York and Louisville offices for the furnishing *if* cars on rental as aforesaid to be furnished at its several depots embracing a large number of depots outside of Georgia, as well as said Savannah, Georgia, and Jacksonville, Florida depots. Said contract was made in Kentucky and all accounts, settlements and payments thereunder have been made and are made and are to be made in Louisville, Kentucky.

9. That under said contract plaintiff has *used* in said State during the years 1907 to 1913 inclusive, a number of cars the average of which in each year were as shown by a Table hereto attached marked Exhibit "A."

10. Plaintiff shows that the entire collections are made and its bills sent out and received outside of the State of Georgia through and in the New York office. That all remittances of rental or mileage from railroad companies are made to its New York offices. That it does no business in Georgia, that it exercises no franchise in this State and especially none of the character which are taxed by the State of Georgia under its Statute taxing franchises.

34 That under the Constitution and laws of Georgia all property located in said State is subject to be taxed. But the Constitution of said State constitutes all property a single class for the purpose of taxation and requires it to be taxed uniformly with all other property, ad valorem and at the same rate. It prohibits the separation of property into classes and a burden of taxation from being laid on a part or class of property, different from that sustained by the remaining property in the State.

12. Plaintiff shows that by Statute, the State of Georgia has prescribed that instead of a return of the property of plaintiff, to-wit, its cars located in the State of Georgia during the year, being returned for taxation and being taxed, ad valorem and uniformly

with the other property in said State, equipment companies are required to return the value of all their equipment as of January 1st, and the entire mileage of the railroads traversed by the said equipment in the United States for the preceeding year and the mileage of railroads in Georgia traversed by its equipment for such preceeding year and a percentage of its total equipment identical with the proportion which the mileage in Georgia for the preceeding year bears to the total railroad mileage in such preceeding year, is assumed to be the property of the Equipment Company located in Georgia subject to taxation for the current year.

13. Plaintiff shows that under such statutory method said
35 Comptrolier General is proposing to assess it as taxable by the State of Georgia, for the year 1914 on an amount thus obtained of $291,196,00. He has also assumed that a like proportion of railroad mileage traversed by the cars of Plaintiff existed in all preceeding years to and including the year 1907, and that the total value of plaintiff's property during each of the said preceeding years was the same as that assumed for the purpose of taxation in the year 1914, and therefore, said defendant is proposing to tax orator by the State of Georgia on an amount exclusive of franchise tax, of five mills on $291,196,00 for each and every year commencing with the year 1907, which does not represent its property in the State of Georgia but any arbitrary percentage of its entire property.

14. Plaintiff shows that it never had regarded itself as liable to taxation in the State of Georgia, nor had said State or any of the officers in the preceeding years ever required any returns for taxation. That in the early part of the year 1914 it conceived the idea that it might owe to the State of Georgia a return of the cars assigned to traffic in Georgia for taxation and therefore voluntarily took up with the Comptroller General of Georgia the question of making a return of such cars for taxation. To that end it asked for blanks on which to make a return for taxation of its property in this State, for said year.

36 15. It made a return to said Comptroller General, returning 57 cars, which it avers is a correct statement of the number of cars it has, being used by its lessees in this State (it has no other property therein).

16. Said Defendant as such Comptroller General refused to accept such return; but on the contrary demanded information as to the Railroad tracks total and for Georgia traversed by plaintiff's cars during the year 1913 and the valuation of plaintiff's total equipment, and by the application of this percentage method assessed plaintiff for taxation in Georgia for the year 1914 as $291,196,00, whereas the value of the cars orator had in Georgia during the period subject to such taxation taken at the same valuation per car as were used in making up the value of plaintiff's total equipment was $17,310,00.

Plaintiff avers that said defendant did not investigate to ascertain what cars defendant had had in Georgia during 1913 or any other year, nor to ascertain the value of such cars but attempted to tax it by the method stated above on about 300 cars of the value of approximately $250,000 located outside of the State of Georgia.

17. Plaintiff avers that the mileage of railroad traversed
37 by its cars in the several states has no relation whatever to the number of cars in use or located in such State. That in several States other than Georgia, plaintiff does at different localities, what might be called a strictly local business; large numbers of these cars are there located which are moved on a local mileage of limited distance; confined entirely within such state.

18. Under this method of conducting business, a large per cent of these cars are at all times located outside of the State of Georgia, at which might be termed as "Home Points." Solely as an illustration of the utter inaccuracy of the system pursued in ascertaining the number of these cars located in Georgia as above set forth it calls attention to the fact that to take the car wheelage made by its cars in Georgia, as compared with its car wheelage made by all of its cars in a single year, would be very much more accurate, although not in any sense accurate.

On this basis the amount of its cars in Georgia would be reckoned at not over one per cent of its total equipment instead of 2.761% as is now claimed under the track mileage system pursued under the Equipment Car Statute.

Plaintiff states that neither of said methods are even approximately accurate, but that it has kept a record of the number of its cars moving in and through the State of Georgia, and that the average
38 thereof shows that fifty-seven cars is the highest average of its cars located in said State for any of said years above mentioned.

This arbitrary method of taxation, taking the value per cars used by plaintiff in making the return, which it avers is a full value, to-wit: $830.00 per tank car, would tax plaintiff in Georgia for the year 1914 on at least 350 cars which is not less than six times as many cars as it had in said State on an average, or at any one period during the time covered by such return, or subject under any proper method to taxation in Georgia.

19. Plaintiff denies that the defendant has ever made any attempt to ascertain its property located within the State of Georgia during any of said years, or to assess said property at its value for taxation, but on the contrary has simply ascertained the percentage of its entire property as shown by the ratio of the railroad traversed by its equipment in Georgia and the railroad mileage traversed by its equipment everywhere, as shown by its return made in 1914.

It denies that defendant's action in making said percentage of its property and calling it an assessment, are any assessment or that there has been anything done by said defendant to prevent plaintiff from making a return for taxation for the years 1907 to 1913 inclusive.

39 20. Plaintiff shows that it has tendered to said defendant as such Comptroller General for each of said years a return of the same form giving the number of cars in the State in each year and the values thereof at $830.00 per car. Plaintiff says that these returns are the full number of cars in said State subject to taxation in each of said years at their full value. A schedule

showing the number for each year with their values is attached as Exhibit "A" and made a part hereof. It has had during each of said years no other property in the State of Georgia, and has paid to defendant the taxes on said valuation given in said Exhibit "A" for each of said years at the rate of five mills for each year being the rate for such year with all interest due in connection with such tax or proceeding taken thereon. Such payment being made on an agreement that the same is without prejudice to the right of the Comptroller to demand and the plaintiff to deny and resist, the payment of further taxes alone set forth as demanded by said defendant.

21. Plaintiff shows that not only is said defendant demanding the sum as taxes above set forth from it but is also demanding of plaintiff a franchise tax on the sum of $27,685.00 per annum for each of the years above stated, as the value of the taxable franchise in Georgia and further insisting that because the same has
40 not been returned for taxation in said years that Plaintiff must pay on twice the amount of said $27,685.00 for each said year, and has notified plaintiff that he will issue executions against it for taxes at the rate of five mills on said sums assessed by him both for taxes on equipment and a franchise tax (the last being doubled) besides interest and costs and will levy upon and seize its cars in said State of Georgia and sell the same to coerce payment thereof.

22. Plaintiff alleges that such demand for taxes is illegal not only under the Constitution of Georgia, but also under the Fourteenth Amendment of the Constitution of the United States.

The amount of said alleged Franchise Tax has not been reached by ascertaining or valuing any franchise exercised by plaintiff in the State of Georgia, but that the said defendant has arbitrarily estimated the franchise of plaintiff at the sum of $1,000,000.00 and has taken the same percentage of 2.761%, to-wit, the average between track mileage traversed by all of its cars in Georgia and the track mileage traversed by all of its cars, and estimated such percentage of its total franchise value. Plaintiff expressly denies that it has any franchise in the State of Georgia, or that there are any franchises used by it therein of any value whatever.

23. Plaintiff avers that the said attempt to tax its property by levying a tax on such percentage of its entire property as
41 track mileage in Georgia traversed by its cars bears to the total track mileage traversed by all of its cars violates the provisions of the Constitution of Georgia requiring that all taxation shall be ad valorem and uniform on every species of property taxed within the territorial limits of the authority levying the tax.

24. It is further obnoxious to the 14th Amendment of the Constitution of the United States because it has the effect to tax property not located in Georgia, or subject to taxation by the taxing power of said State. It thus taxes property without due process of law and denies to plaintiff the equal protection of the laws.

The cars of plaintiff are only temporarily in said State in order

to comply with contracts or rental thereof made elsewhere; they are not used in connection with a business being conducted by plaintiff in said State and it avers that they are not perm-ently located here, but pass in and out.

25. That the refusal of the returns of plaintiff and the allotment of a percentage of its entire property as attempted in this case instead of accepting a return of its cars in said state to be actually ascertained if disputed as is provided for the general body of tax payers, not only denies to plaintiff its rights under the Constitution of Georgia, but denies to it the equal protection of the laws, contrary to the provisions of the said 14th Amendment of the Constitution of the United States.

12 26. That the attempt to levy a so-called franchise tax on plaintiff's franchise is not only contrary to the provisions of the laws of Georgia, but that under the facts of this case would be a taking of plaintiff's property without due process of law and deny to it the equal protection of the laws, contrary to the said 14th amendment.

27. Plaintiff further shows that unless the defendant is enjoined from so doing he will issue a large number of separate executions against your said plaintiff and will cause the same to be levied on the tank cars of orator in said State from time to time. That this will cause a multiplicity of suits, especially as it will cause municipalities and other political taxing bodies to attempt the same thing which will create an increasing multiplicity of suits, at great cost, expense and annoyance.

That plaintiff is without any adequate remedy at law or elsewhere save in a Court of Equity.

Wherefore, waiving all answer under oath your plaintiff prays.

(*a.*) That it be decreed that the attempt of said defendant to assess said alleged franchise taxes against plaintiff is without authority of law and void and violates the 14th Amendment of the Constitution of the United States and should be perpetually enjoined.

(*b*) That it be decreed that plaintiff has no franchise of

13 the State of Georgia, subject to taxation under the laws of Georgia and that defendant be enjoined from attempting to assess or collect any tax on franchise from plaintiff.

(*c.*) That the assessment by defendant against plaintiff of the sum of $291,196 as a property tax (exclusive of franchise tax) in each of said years 1907 to 1914 inclusive be decreed to be illegal, arbitrary and void and to also violate the 14th Amendment of the Constitution of the United States.

(*d.*) That the attempted assessment of $291,196.00 in each year by taking the percentage of the miles of railroad track traversed in Georgia and the total miles of railroad track traversed by all of its cars be decreed to be illegal, null and void—to be violative of the Constitution of Georgia and to be also violative of the 14th Amendment of the Constitution of the United States as alleged in this petition and that defendant be enjoined from making any such assessment or from collecting any taxes based thereon.

(*e.*) That it be decreed that plaintiff is only liable for taxes for said year 1907 to 1913 inclusive in each subsequent years on the amount set forth in Exhibit "A" at five mills and that the defendant be required to accept its tender thereof.

(*f.*) That plaintiff may have such other and further relief as the case may require and equity can give.

It further prays that process do issue requiring the defend-
44 ant William A. Wright, Comptroller General, as aforesaid, to be and to appear at the next term of this court to answer this petition.

KING & SPALDING,
Pltffs. Attorney.

EXHIBIT "A."

Number of Cars and Values for Years 1907-1914 Inclusive.

Year.	Number of cars.	Value.
1907	34	$25,730.00
1908	32	26,560.00
1909	56	46,480.00
1910	51	42,330.00
1911	48	39,840.00
1912	49	40,670.00
1913	57	47,310.00
1914	57	47,310.00

GEORGIA,
Fulton County:

Personally appeared Jack J. Spalding before the subscribed officer, and on oath says he is a member of the law firm of King and Spalding, Attorneys for the plaintiff in the foregoing petition, that the transactions and discussions touching the matters com-
45 plained of in the petition have been in a large measure conducted by affiant's firm with the Comptroller General. That he is familiar with the facts set forth in the petition that there is no officer of the above company now in the above county, and the statements of the foregoing petition are true except where stated on information and belief, and these he believes to be true.

JACK J. SPALDING.

Subscribed and sworn to before me, this June 8th, 1914.

HENRY A. NEWMAN,
N. P. Fulton County, Ga.

Sanctioned and ordered filed and served, June 8, 1914.

J. T. PENDLETON,
J. S. C. A. C.

Due and legal service of the within petition and order acknowledged, copy rec'd, process, copy process waived and all further service and notice waived.

June 8, 1914.

WARREN GRICE,
Atty. Genl.

Filed in office this the 8th day of June, 1914. W. W. Clarke, D. Clk.

46 *(Demurrer of Defendant.)*

GEORGIA,
Fulton County:

Comes now the defendant above named, and at the first term of the court and before the call of the appearance docket, files this his demurrer and moves to dismiss the petition for that no cause of action is set forth therein, and of this he prays the judgment of the court.

WARREN GRICE,
Atty. Genl. of Ga.

Filed in office this 8th day of July, 1914. W. W. Clarke, D. Clk.

(Answer of Defendant.)

GEORGIA,
Fulton County:

Comes now at the first term of the court and before the call of the appearance docket, the defendant, and answering said cause says:

1. He admits the allegations of fact contained in each of the several paragraphs of the petition, but denies the conclusions of law therein set up and says that plaintiff does exercise the franchise in said State of the value of $27,685, and further that on the 7th day of April, 1914, this defendant did assess the property of complainant in Georgia at a total valuation of $346,566 for taxation for the years 1914, 1913, 1912, 1911, 1910, 1909, 1908, and on said
47 last named day notified the company that they would have 20 days from said date in which to decide whether to accept this valuation or to submit to arbitration the question of valuation of its property. Defendant avers and insists that this was a proper and legal assessment, and the company not having within the 20 days elected to arbitrate the question, that the valuation and the assessment stand and the company is now concluded as to all matters connected therewith.

Therefore this defendant prays to be hence discharged with its reasonable costs.

WARREN GRICE,
Atty. Genl.

GEORGIA,
Fulton County:

Before me personally appeared Wm. A. Wright, Comptroller General, who on oath deposes and says that the facts stated in the foregoing answer are true.

WM. A. WRIGHT.

Sworn to and subscribed to before me, this the 8th day of July, 1914.

[SEAL.] W. H. HARRISON,
N. P. Fulton County, Ga.

Filed in office this the 8th day of July, 1914. W. W. Clarke, D. Clk.

48 (*Order of October 7th*, 1915.)

The above stated case coming on for hearing for final decree at September Term 1915, of said Court by virtue of the consent of counsel heretofore made the order of this Court, consenting and agreeing that said case be tried and disposed of at the first term in accordance with Section 5421 of the Code of Georgia and that it be tried on all issues of law and fact before the Judge presiding in said Court without the intervention of a jury, with all rights reserved for both parties to move for a new trial or prosecute an appeal writ of error from such judgment as they may be advised and said case having been submitted for such final trial and decree upon the petition and demurrer and answer thereto and an agreed statement of facts and having been argued.

The Court finds that the facts of said case are as set forth in the agreed statement of facts filed in this case which is by reference incorporated herein as if here set out, and in the allegations of fact contained in the petition of the plaintiff in this case, which allegations of fact are admitted to be true by the answer of the defendant filed herein, and which are here refer-ed to and incorporated in like manner and

It is Considered, ordered and adjudged by the Court that under the facts of this case as above found that the said plaintiff is not subject to any franchise tax and that the said defendant is enjoined from attempting to assess or collect any franchise tax
49 from the plaintiff for the years 1907 to 1914 inclusive.

It is further considered, ordered and decreed, that the said assessment of Two Hundred and Ninety One Thousand, One Hundred and Ninety Six ($291,196.00) Dollars in each of the years 1907 to 1914, as set forth in the pleadings and agreed statement of facts in this case by the said defendant, as Comptroller General of Georgia, against complainant, by taking such percentage of its entire property as the percentage of miles of railroad traversed in Georgia bears to the total miles of railroad track traversed by all

of its cars is not violative of the Constitution of Georgia, nor is it violative of the Fourteenth (14) Amendment of the Constitution of the United States as alleged in said petition, and does not take plaintiff's property without due process of law or deny to it the equal protection of the laws, and that the same is legal and valid and that the injunction against the collection and enforcement of said assessment and taxes (other than said franchise taxes) is refused.

That the costs of this suit be taxed by the Clerk, and be paid one half by the plaintiff and one half by the defendant.

In Open Court this 7th day of October, 1915.

GEO. L. BELL,
Judge Superior Court Atlanta Circuit.

50 STATE OF GEORGIA,
County of Fulton:

I Hereby Certify, That the foregoing pages hereunto attached, contain a true Transcript of such parts of the record as are specified in the Bill of Exceptions and required, by the order of the Presiding Judge, to be sent to the Supreme Court, in the case of Union Tank Line Company, Plaintiff in Error, vs. Wm. A. Wright, (Comptroller General,) Defendant in Error.

I was unable to send up this record in the time prescribed on account of the volume of business in this office.

Witness my signature and the seal of Court affixed this the 2 day of Nov. 1915.

[SEAL.] ARNOLD BROYLES,
Clerk Superior Court Fulton County, Georgia,
ex-Officio Clerk City Court of Atlanta.

(Endorsed:) No. 4.

Supreme Court of Georgia, Atlanta Circuit, March Term, 1916.

Union Tank Line Company, Plff. in Error, versus Wm. A. Wright, (Comptroller General), Deft. in Error.

Transcript of Record.

Filed in office Nov. 3, 1915. W. E. Talley, D. Clerk, S. C. Ga.

51 Atlanta Circuit, March Term, 1914.

16.

WRIGHT, Comptroller-General,

v.

UNION TANK LINE CO.

1. This was a suit by an equipment company against the comptroller-general of the State, to enjoin the levy (under the Civil Code, §990) of an ad valorem tax on cars of the company which were allowed to be moved, in the regular course of business, on the

lines of railroad track in this State. It was alleged that the method proposed by the comptroller-general, if carried into effect, would impose a tax on property outside the State. The case was tried upon a agreed statement of facts. Held, that while some of the expressions used in the agreed statement of facts, if taken alone and disassociated from the context, might have the appearance of conceding that the comptroller-general was seeking to tax property outside of the State, yet, when taken as a whole and in connection with the allegations of the petition, it is evident that the parties did not intend any such concession.

2. Civil Code §990 is to be construed in connection with Civil Code §§1031 and 989, which, by reference, are made parts thereof. So construed, provision is made for a method of taxing cars of equipment companies, moved on the lines of railroads in this State, on the track-mileage basis of apportionment. The method so employed does not contemplate taxation of property outside of the State, and is not violative of the due-process clause of the Federal or the State constitution.

3. The agreed statement of facts in this case shows the following:

The Union Tank Line Company is incorporated in the State
52 of New Jersey. It has offices in New York. It rents tank-cars to the Standard Oil Company, a Kentucky corporation. The agreements and settlements are made outside of this State. The cars are furnished for use by the Standard Oil Company. The railroad companies, in lieu of providing tank-cars, pay to the Union Tank Line Company three fourths of a cent per mile for each mile the car is moved over its tracks. The Standard Oil Company transports a large amount of oil to Jacksonville, Florida, and Savannah, Georgia, mainly by marine transportation. From these points oil is sent out, mainly by means of tank-cars, to different points in the interior. A number of these cars come into Georgia and are used there and elsewhere. Held, that this does not authorize the imposition upon the Union Tank Line Company of a franchise tax in addition to the tax upon its tangible property in this State, the value of which is arrived at by the rule indicated in the preceding head note.

The Union Tank Line Company, a New Jersey corporation, was engaged in the business of renting tank-cars to be employed in transporting oil and other like fluids over railroads throughout the United States. It had no office or agent in Georgia; nor did it have any property or do any business in Georgia, except by permitting its cars to be brought into and carried out of the State, and used, while in the State, by those having them for the time being. The contracts for the rental of the cars were made beyond the limits of the State, and the tank company also received its remuneration
53 for the rent of its cars at its offices outside of the State. In addition to the rents which it received from its customers (shippers of oil), it received, from the several railroads over which its cars were moved, a stated sum per mile for each mile that the cars were moved while on the several lines of the respective rail-

roads. Under a contract of rental, executed outside of the State, different cars were supplied to one of its customers from time to time, which passed in and out of the State, and between intermediate points in the State in the movement of oil in the regular course of business. The officers of the tank company wrote to the comptroller-general, asking for a form of tax returns "required to be made by equipment companies under section 990, Code of Georgia." No forms had ever been prepared for equipment companies, and the comptroller-general forwarded forms prepared for express companies, explaining certain alterations to be made. After some correspondence, the tank company made a return for the year 1913. The prepared return contained, among other things, the following:

"Value of all Real Estate Owned by Company in or out of Georgia: $—. None.

Total value of Sleeping or Palace Cars and all other Cars and Equipments, and all other Personal Property, $10,518,333.16.

Total Number of Miles of R. R. Lines over which Sleeping Cars Run: 251,999.

Number of Miles of R. R. Lines in Georgia over which Sleeping Cars are run: 6976½.

Value of Franchise: $—. No Franchise.

Total Value of Property Taxable in Georgia: $47,310.00.

Union Tank Line had an average of 57 tank-cars in Georgia during 1913, in which, at a value of $830.00 per capita, equals $47,310.00.

Acknowledging receipt of this return, the comptroller-general, on March 16, 1914, wrote to the officers of the company as follows:

"I acknowledge receipt of your letter of March 12th, to-
54 gether with the enclosure of the 1914 return as for the year ending December 31, 1913, but the return is for taxation this year, though the mileage figures of course have to be based on the previous year's business. Returns should, of course, be made for back years, as this is the first year your company has ever made a return for taxation. Unfortunately our courts have held that back taxes can be collected for only seven years, 1907, 1908, 1909, 1910, 1911, 1912, and 1913. Special blanks are now being prepared for equipment companies, and I will mail you a supply for the years mentioned within the next few days,—just as soon as they are received from the printer.

"As to the return filed, you have furnished the data desired, but have made an error in the application of the same. After giving the mileage for the company everywhere and for Georgia, you then go ahead and assign 57 tank-cars for this State and value them at $830.00 each, making the total for Georgia $47,310.00. This is an incorrect method. If you were to be allowed to assign so many cars to the State for taxation, there would be no need for the mileage figures to be furnished. The value to be assigned to Georgia must be in the same proportion to the entire valuation for the entire company as the mileage in Georgia bears to the entire mileage everywhere. Thus: 251,999 : 6,976.5 :: $10,518,333 : ?

The $10,518,333 multiplied by 6,976.5 gives 73,381,150,174.5, which divided by 251,999 gives $291,196, the proper valuation to be assigned to Georgia. Or, to work it out by percentage instead
55 of proportion, 6,976.5 the Georgia mileage, is 2.76846 per cent of 251,999, the entire mileage. Georgia is therefore entitled to 2.76846 per cent of the entire valuation. This per cent of $10,518,333 is $291,195.84, or the same sum arrived at by proportion, if we call the 84 cents an even dollar. Unless decimals are extended almost indefinitely, there is, of course, always this slight difference.

"The correct valuation for Georgia of your physical property is therefore, $291,196, under the return you made. A franchise value should also be returned. And whatever the value you place on the franchise for the entire country, 2.76846 per cent. of the same must be assigned for Georgia. Thus, if you value your franchise at $1,000,000, the franchise value assigned to Georgia would be $27,685. Please let me hear from you in regard to the franchise. The returns for the seven years back you need not bother with until you receive the blanks mentioned in the foregoing."

Nothing further having been heard by the comptroller-general from the company, on April 7th, 1914, he assessed the physical property of the company at $291,196 and franchise at $27,685, the franchise being doubled as prescribed in section 8 of the act of 1902 (Civil Code, § 1029), making the total valuation for each of the years 1907-1914, inclusive, $346,566. On the same day the comptroller-general informed the tank company, by letter, of the assessment. The letter also contained the following: "Under the
56 law you have twenty days from this date in which to decide whether to accept this valuation or submit to arbitration the question of the value of the company's property. Unless within twenty days you notify me of your intention to arbitrate, and also furnish me with the name of your arbitrator, the assessment will stand." The company acknowledged receipt of the letter, and considerable correspondence ensued; but it did not offer to arbitrate. After the term for arbitration was over, the company, by its attorney, on May 26, 1914, offered to make returns for the years 1907 to 1912, inclusive, similar to that tendered for the year 1913, hereinbefore set out, except that there was a variance as to values. These returns were also rejected. After this the tank company instituted an action for injunction to prevent the levy and collection of the taxes contended for by the comptroller-general. The court refused to dismiss the petition on general demurrer. By consent the trial proceeded before the judge, under an agreed statement of facts, without the intervention of a jury. A judgment was rendered for the plaintiff, and the defendant executed.

ATKINSON, *J.*:

1. From what has been said, it is to be observed that the case relates to two matters, namely: a tax assessment against tangible property of the company; and second, a claim of right to assess a

franchise tax. We will consider each in the order named above.

57 While some of the expressions used in the agreed statement of facts, if taken alone and dissociated from the context, might have the appearance of conceding that the comptroller-general was seeking to tax property outside of the State, yet, when taken as a whole, it is evident that the parties did not intend any such concession. The effort was to tax property in this State, and in doing so to apply the statute designed as a rule to ascertain the property so coming into the State and its proper valuation. The correspondence between the officers of the tank company and the comptroller-general, set out in the statement of facts, formed a part of the petition for injunction, which is to be taken most strongly against the plaintiff. It referred in express terms to Civil Code § 990, and showed that both parties contemplated that the return which the comptroller-general was insisting upon was such as should be made under the requirement of the statute. It was contended by the plaintiff that the effect of carrying out the scheme of the statute would tax property out of the State. The comptroller-general denied that such would be the effect, and proposed to tax cars only in pursuance of the statute. The attack made by the plaintiff, being upon this method of taxing, resolves itself merely into an attack upon the constitutionality of the statute. Whether it was unconstitutional was a question of construction and of law, which the

58 parties would not yield in the pleadings or in the statement of facts. A construction of the latter as a concession by the comptroller-general that he was attempting to tax cars that had not come into the State would make the comptroller-general assume a right to do a thing for which he had never contended, and be outside of the real issue—the constitutionality of the scheme of the statute.

2. In determining as to the constitutionality of the scheme of the statute referred to, resort must be had to its provisions. The statute is embodied in the Civil Code, § 990, which is as follows: "Any person or persons, copartnership, company or corporation wherever organized or incorporated, whose principal business is furnishing or leasing any kind of railroad cars except dining, buffet, chair, parlor, palace, or sleeping cars, or in whom the legal title in any such cars is vested, but which are operated, or leased, or hired to be operated on any railroads in this State, shall be deemed an equipment company. Every such company shall be required to make returns to the comptroller-general under the same laws of force in reference to the rolling-stock owned by the railroads making returns in this State, and the assessment of taxes thereon shall be levied and the taxes collected in the same manner as provided in the

59 case of sleeping-cars in section 989." The last sentence of the foregoing excerpt, by referring thereto, makes as a part of the statute the laws "of force" in this State "in reference to the rolling-stock owned by the railroads making returns in this State." In the same manner it makes Civil Code § 989 a part of the statute. The only law which refers to taxation of "rolling-stock" of railroads paying taxes in this State is embodied in Civil Code §1031,

and is evidently the law on that subject referred to in section 990. Section 1031 is as follows: Railroad companies operating railroads lying partly in this State and partly in other States shall be taxed as to the rolling-stock thereof and other personal property appurtenant thereto, and which is not permanently located in any of the States through — said railroads pass, on so much of the whole value of rolling-stock and personal property as is proportional to the length of the railroad in this State, without regard to the location of the head office of such railroad companies." The other section (989) referred to in section 990 is as follows: "Each non-resident person or company whose sleeping-cars are run in this State shall be taxed as follows: Ascertain the whole number of miles of railroad over which such sleeping-cars are run, and ascertain the entire value of all sleeping-cars of such person or company, then tax such sleeping-cars at the regular tax rate imposed upon the property of this State in the same proportion to the entire value of such
60 sleeping-cars that the length of lines in this State over which such cars are run bears to the length of lines of all railroads over which such sleeping-cars are run. The returns shall be made to the comptroller-general by the president, general agent, or person in control of such cars in this State. The comptroller-general shall frame such questions as will elicit the information sought, and answers thereto shall be made under oath. If the officers above referred to in the control of such sleeping-cars shall fail or refuse to answer, under oath, the questions so propounded, the comptroller-general shall obtain the information from such sources as he may, and he shall assess a double tax on such sleeping-cars. If the taxes herein provided for are not paid, the comptroller-general shall issue executions against the owners of such cars, which may be levied by the sheriff of any county of this State upon the sleeping-car or cars of the owner who has failed to pay the taxes."

The several code sections embody the statutory scheme for taxing cars of equipment companies whose cars are handled over the railroads in this State. Owing to the nature of the business, it is difficult to ascertain the number of cars of equipment companies that come into this State and designate the identity of each car or its value. The purpose of the statute is to provide a reasonable method for determining the fact that cars come into this State and
61 the values thereof, to the end that the equipment companies allowing their cars to come into this State may bear their just proportion of taxes leviable in this State. The scheme of the statute is what is sometimes called the track-mileage basis apportionment, or what in a more general way is termed the unit rule. The comptroller-general, followed the statute. The unit rule has been upheld by the Supreme Court of the United States, in regard to railroads, telegraph companies, and sleeping-car companies. Kentucky Railroad Tax Cases, 115 U. S. 321 (6 Sup. Ct. 57, 29 L. ed. 414); Western Union Telegraph Co. v. Massachusetts, 125 U. S. 530 (8 Sup. Ct. 961, 31 L. ed. 790); Pullman Palace Car Co. v. Pennsylvania, 141 U. S. 18 (11 Sup. Ct. 876, 35 L. ed. 613). And this principle of average has been approved in regard to refrigerator-cars. American

Refrigerator Transit Co. v. Hall, 174 U. S. 70 (19 Sup. Ct. 599, 43 L. ed. 899); Union Refrigerator Transit Co. v. Lynch, 177 U. S. 149 (20 Sup. Ct. 631, 44 L. ed. 708). It has even been held that the unit rule of valuation could properly be applied to the valuation of property of express companies within a certain State, though there was no physical connection with property beyond the State. On this subject the Supreme Court of the United States was divided as to the applicability of the rule to express companies, but the majority held that it was applicable. Adams Express Co.
62 v. Ohio State Auditor, 165 U. S. 194 (17 Sup. Ct. 305, 41 L. ed. 683); Adams Express Co. v. Kentucky, 166 U. S. 171 (17 Sup. Ct. 527, 41 L. ed. 960). While in some of the decisions of that court it has been said that special circumstances might exist which would require a modification of the rule, such as the existence of "terminal facilities of an enormous value" in one State and not in another, yet, in the opinion of the Chief Justice in Adams Express Co. v. Ohio State Auditor, supra, which was concurred in by a majority of the court, it was said (165 U. S. 227): "Special circumstances might exist, as indicated in Pittsburg, Cincinnati, etc. Railway v. Backus, 154 U. S. 421, 443 [14 Sup. Ct. 1114, 38 L. ed. 1031] which would require the value of a portion of the property of an express company to be deducted from the value of its plant as expressed by the sum total of its stock and bonds, before any valuation of mileage could be properly arrived at; but the difficulty in the cases at bar is that there is no showing of any such separate and distinct property which should be deducted, and its existence is not to be assumed. It is for the companies to present any special circumstances which may exist, and, failing their doing so, the presumption is that all their property is directly devoted to their business, which being so, a fair distribution of its aggregate value would be upon the mileage basis." We deem it proper to follow the decision of the majority. In the case before us there is no contention
63 that the tank company owns any terminals of great value outside of the State of Georgia, or any real estate so located, or that there is any property which is not employed in the business. The provision in section 1031, supra, that such company shall be taxed as to cars "thereof and other personal property appurtenant thereto, and which is not permanently located in any of the States through which said railroads pass," negatives the intent to tax cars which do not come into this State. Any one of the cars of the company might be brought into Georgia as required. These cars are not like wagons or automobiles, disconnected from a railroad, which may be carried to any point about the country. The necessarily travel over the tracks of railroads. One car may be called into service in this State as well as another. The company has an arrangement with railroads in this State to charge them mileage for the use of their cars in hauling them over their tracks. It seems to us, therefore, that the case falls within the rule laid down by the Supreme Court of the United States, as above mentioned, and that there are no such circumstances as to bring it within the ruling made in Fargo v. Hart, 193 U. S. 490 (24 Sup. Ct. 498, 48 L. ed. 761),

where it was held that "A State assessment upon an express company of another State, proportioned to mileage, is bad when it appears that the total valuation is made up principally from
64 real and personal property, not necessarily used in the actual business of the company, and which is permanently located in the State where the company is incorporated." It will be seen that the facts in that case are quite different from the one under consideration. If the unit rule can never be applied where the company has assets in more than one State, and where there is an inequality in the amount of such assets in proportion to mileage in the respective States, the rule might as well be declared abolished at once; because practically all large companies doing business in different States have a considerably larger amount of assets in one State than in another. It rarely, if ever, occurs that there is anything like an exact proportion between the assets and mileage in the respective States where business is done. So that, to announce that the mileage rule is sound, and then to modify it to the extent of saying that it does not apply, or must be changed, whenever the company shows a disproportion of assets used in the business in different States, will in most cases be equivalent to abolishing it as a rule and making it a mere circumstance for consideration by the assessing authorities.

Our statutes provide ample means for attacking the validity of a tax, or for arbitrating the valuation placed upon property by the comptroller-general. Civil Code, §§1045-1046, 1050-1054. Nor does the law providing for such an assessment of property of
65 certain character, in order to determine its value, contravene the provision of the State constitution requiring taxes upon property to be uniform and ad valorem. Columbus Southern Railway Co. v. Wright, 89 Ga. 574 (15 S. E. 293).

3. Under the agreed statement of facts, we do not think that the tank company is exercising any franchise in the State of Georgia which is taxable as such, as distinguished from the consideration of the unit or mileage rule in fixing the value of the property within the State. It was agreed that the company had no agency in Georgia, conducted no business here, and exercised no franchise here, unless it did so under the following agreed facts: The company is incorporated in the State of New Jersey; it has officers in New York; it rents tank-cars to the Standard Oil Company, a Kentucky corporation. The agreements and settlements are made outside of this State. The cars are furnished for use by the Standard Oil Company; and the railroad company, in lieu of providing tank-cars, pays to the tank company ¾ of a cent per mile for hauling each car. The Standard Oil Company brings a large amount of oil to Jacksonville, Florida, and Savannah, Georgia, mainly by marine transportation. From these points oil is sent out by means of the tank-cars to different places in the interior. A number of these cars come into Georgia and are used there and elsewhere. Under such facts, we are unable to see what special franchise the
66 company exercises under any grant from this State. It is at least doubtful whether the tax authorities of Georgia could

tax a franchise, strictly so called, which was granted by another State, as distinguished from intangible property. We hold, therefore, that, while the purpose of the cars for use may be considered in determining the value of those in Georgia, the company does not exercise in this State any such franchise as can be separately taxed. It is true that section 990 of the Civil Code uses broad language in defining equipment companies; and that if that language be construed in connection with section 1019, it may be argued with some force that the tank company came within the purview of those sections. But, in the light of the agreed statement of facts above mentioned, we think it is excluded from the operation thereof.

Judgment affirmed in part and reversed in part. All the Justices concur, except

67 LUMPKIN and HILL, *JJ.*, dissenting:

We concur in the ruling that what is known as the "unit rule" of assessment, such as has been held to be legal in regard to sleeping-car companies, express companies, and the like, may be applied to railroad-equipment companies. We do not contend that sections 989 and 990 of the Civil Code of 1910 are unconstitutional. But, upon mature reflection, we are unable to concur with the majority of the court in the construction which they have placed upon the agreement of facts upon which the case was submitted for the determination of the trial court. In that agreement is recited the correspondence between the comptroller-general and attorneys on the subject, and the returns which were tendered by the company through its attorneys are set out. But the agreement of facts also contains, among other things, the following: "On April 7th, 1914, when the defendant entered an assessment, in his office, of property and franchises of the plaintiff as shown hereinbefore, he had no other information for any of the years 1907 to 1914 inclusive than was contained in the said return filed by plaintiff on March 16th, 1914, and embraced in this statement and which was refused by the defendant, and did not know what cars defendant had had in Georgia during any of said named years, nor did he ascertain the value of such cars, but his act was taken on such information hereinbefore shown; and that the assessment so entered by the defendant in his office against the plaintiff's property, during said period
68 for each of said years, embraces the valuation of about three hundred cars in excess of what plaintiff actually had in the State of Georgia during said years, of the approximate value of $250,000 each year; and that the true value of a tank-car is about eight hundred and thirty ($830) dollars per car; that for the year 1914 the assessment entered against plaintiff by defendant covered the value of at least three hundred and fifty cars in excess of the number of cars plaintiff actually had in the State of Georgia for the time the said tax was assessed." Later in the agreement occurs the following: "The foregoing returns tendered by the plaintiff and rejected by the defendant embrace the full number of cars in said

State belonging to the plaintiff for each of the said years, at their full value, and the same are embraced in the schedule A referred to" etc. In the petition there are the following allegations: "Plaintiff avers that the mileage of railroads traversed by its cars in the several States has no relation whatever to the number of cars in use or located in such State. That in several States other *then* Georgia, plaintiff does, at different localities, what might be called a strictly local business; large numbers of these cars are there located, which are moved on a local mileage of limited distance, confined entirely within such State." The answer admitted the allegations of fact contained in each of the several paragraphs of the petition, but denied the conclusions of law therein set up; and alleged that the plaintiff did exercise a franchise in the State of Georgia of
69 the value of $27,685, and on April 7, 1914, "this defendant did assess the property of complainant of Georgia at a total valuation of $343,566 for taxation for the years 1914, 1913, 1912, 1911, 1910, 1909, 1908, and on said last named day notified the company that they would have 20 days from said date in which to decide whether to accept this valuation or to submit to arbitration the question of valuation of its property."

We have not undertaken to set out the entire agreement of facts, but we think that those portions which are stated above will suffice to show that the actual application sought to be made of the "unit rule" in this case was illegal. We do not contend that a proper assessment on the basis of the "unit rule" cannot be made, but we are constrained to think that the agreement shows that what has been done would have the effect of taxing property outside of the State.

70 Atlanta, March Term, 1915.

4.

UNION TANK LINE COMPANY

v.

WRIGHT, Comptroller General.

ATKINSON, *J.*:

This case was before the Supreme Court on a former occasion, 143 Ga. 765 (85 S. E. 994). It was there ruled:

"1. This was a suit by an equipment company against the comptroller-general of the State, to enjoin the levy (under the Civil Code §990) of an ad valorem tax on cars of the company which were allowed to be moved, in the regular course of business, on the lines of railroad track in this State. It was alleged that the method proposed by the comptroller-general, if carried into effect, would impose a tax on property outside of the State. The case was tried upon an agreed statement of facts. Held, that while some of the expressions used in the agreed statement of facts, if taken alone and disassociated from the context, might have the appearance of con-

ceding that the comptroller-general was seeking to tax property outside of the State, yet, when taken as a whole and in connection with the allegations of the petition, it is evident that the parties did not intend any such concession.

"2. Civil Code §990 is to be construed in connection with Civil Code §§1031 and 989, which, by reference, are made parts
71 thereof. So construed, provision is made for a method of taxing cars of equipment companies, moved on the lines of railroads in this State, on the track-mileage basis of apportionment. The method so employed does not contemplate taxation of property outside of the State, and is not violative of the due-process clause of the Federal or the State constitution.

"3. The agreed statement of facts in this case shows the following: The Union Tank Line Company is incorporated in the State of New Jersey. It has offices in New York. It rents tank-cars to the Standard Oil Company, a Kentucky corporation. The agreements and settlements are made outside of this State. The cars are furnished for use by the Standard Oil Company. The railroad companies, in lieu of providing tank-cars, pay to the Union Tank Line Company three fourths of a cent per mile for each mile the car is moved over its tracks. The Standard Oil Company transports a large amount of oil to Jacksonville, Florida, and Savannah, Georgia, mainly by marine transportation. From these points oil is sent out, mainly by means of tank-cars, to different points in the interior. A number of these cars come into Georgia and are used there and elsewhere. Held, that this does not authorize the imposition upon the Union Tank Line Company of a franchise tax in addition to the tax upon its tangible property in this State,
72 the value of which is arrived at by the rule indicated in the preceding head note."

After the remittitur was returned to the trial court, the case was again submitted to the judge, who, by consent of the parties, decided the case at the first term, based upon the identical pleadings and evidence that were before the court on the first trial; and upon consideration he rendered a decree in conformity with the rulings of this court as announced above, and held that the Union Tank Line Company was not subject to the franchise tax in this State, but was subject to a property tax, and that the basis of valuation of the property of the company was valid and not violative of the constitution of this State or of the fourteenth amendment of the constitution of the United States, and refused to enjoin the levy and collection of the taxes on the ground that the assessment was unconstitutional. The Union Tank Line Company excepted to so much of the decree as refused to enjoin the assessment of the property and the collection of taxes on such property upon the basis of such assessment. In the bill of exceptions certain grounds were specified upon which it was contended that the decree was erroneous, but they present no point which was not involved in the case on the former hearing and ruled upon by this court. Held, that the rulings of the court when the case was formerly here decided the law of the case; and the judge did not err on the second trial,

73 based on the same pleadings and evidence, in rendering a decree in accordance with such rulings.

Judgment affirmed. All the Justices concur, except Hill, J., who adheres to his views as expressed in the dissenting opinion when the case was here on the former occasion.

74 Supreme Court of Georgia.

Atlanta, February 15, 1917.

The Honorable Supreme Court met pursuant to adjournment. The following judgment was rendered:

UNION TANK LINE CO.

v.

WM. A. WRIGHT, Comptroller General.

This case came before this court upon a writ of error from the superior court of Fulton county; and, after argument had, it is considered and adjudged that the judgment of the court below be affirmed. All the Justices concur, except Hill, J., dissenting.
Bill of costs $10.00.

75 UNITED STATES OF AMERICA, *ss:*

[Seal U. S. District Court, N. D. Georgia.]

The President of the United States of America to the Honorable the Judges of the Supreme Court of Georgia, Greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said Supreme Court of Georgia before you, or some of you, being the highest court of law or equity of the said State in which a decision could be had in the said suit between Union Tank Line Company, a Corporation, Plaintiff in Error and William A. Wright, Comptroller General of Georgia, Defendant in Error, wherein was drawn in question the validity of a treaty or statute of, or an authority exercised under, the United States, and the decision was against their validity; or wherein was drawn in question the validity of a statute of, or an authority exercised under, said State, on the ground of their being repugnant to the Constitution, treaties, or laws of the United States, and the decision was in favor of such their validity; or wherein any title, right, privilege, or immunity was claimed under the Constitution, or any treaty
76 or statute of, or commission held or authority exercised under the United States, and the decision was against the title, right, privilege, or immunity especially set up or claimed under such Constitution, treaty, statute, commission, or authority; a manifest error hath happened to the great damage of the said Union Tank Line Company as by its complaint appears. We being willing that

error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same in the said Supreme Court at Washington, within 30 days from the date hereof, that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error, what of right, and according to the laws and customs of the United States, should be done.

Witness the Honorable Edward D. White, Chief Justice of the United States, the 20th day of March, in the year of our Lord one thousand nine hundred and seventeen.

OLIN C. FULLER,
Clerk United States District Court,
Northern District of Georgia.

Allowed by

BEVERLY D. EVANS,
Acting Chief Justice of the Supreme Court of Georgia.

Filed in office Mch. 20, 1917. Z. D. Harrison, Clk. S. C. Ga.

77 UNITED STATES OF AMERICA, *ss:*

To William A. Wright, Comptroller General of Georgia, Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, at Washington, within 30 days from the date hereof, pursuant to a writ of error, filed in the Clerk's Office of the Supreme Court of Georgia, wherein Union Tank Line Company is plaintiff in error and you are defendant in error, to show cause, if any there be, why the judgment rendered against the said plaintiff in error as in the said writ of error mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness, the Honorable Justice of the Supreme Court of the State of Georgia this 20th day of March, in the year of our Lord one thousand nine hundred and seventeen.

BEVERLY D. EVANS,
Acting Chief Justice of the Supreme
Court of the State of Georgia.

Filed in office Mch. 20, 1917. Z. D. Harrison, Clk. S. C. Ga.

78 [Endorsed.]

Due and legal service of the foregoing citation is acknowledged further service of the same and of other papers waived this March 20th, 1917.

CLIFFORD WALKER,
Attorney General,
Counsel for Defendant in Error.

79 In the Supreme Court of Georgia, Atlanta Circuit, March Term, 1916.

No. 4.

UNION TANK LINE COMPANY, Plaintiff in Error,

vs.

WILLIAM WRIGHT, Comptroller General, Defendant in Error.

Now comes the above named Union Tank Line Company, plaintiff in error as aforesaid, which alleges itself to be a corporation as stated in the record in said case, and says:

That on the 15th day of February, A. D., 1917, a final judgment was rendered in the said Supreme Court of Georgia, affirming the judgment of the lower Court in the above stated case; that the said Union Tank Line Company was and is aggrieved in said judgment, and the proceedings had prior thereto, and claims that certain errors were committed therein to its prejudice.

Said Union Tank Line Company further shows that in said case there was drawn, in question, the validity of the Statute of, and of the authority exercised under, the State of Georgia, on the ground of their being repugnant to the Constitution, treaties or laws of the United States of America, and especially the fourteenth amendment of the Constitution of the said United States, and the decision was in favor of the validity of the said Statute and authority; and in the said case rights, privileges and immunities were claimed by your petitioner, the said Union Tank Line Company, under the Constitution of the United States, and especially under the fourteenth amendment of the said Constitution, and the decision of said Supreme Court of Georgia was against the rights, privileges, and immunities, specially set up and claimed under said Constitution of the United States.

Your petitioner, therefore, desires to avail itself of the law and practice in such case made and provided, by a writ of error from the Supreme Court of the United States.

80 Wherefore, your said petitioner prays that said writ of error may issue to the Supreme Court of Georgia for the correcting of the errors complained of, and that a duly authenticated transcript

of the records, proceedings and papers herein may be sent to the United States Supreme Court.

KING & SPALDING,
CAMPBELL, HARDING & PRATT,
Attorneys for Plaintiff in Error.
ALEX C. KING,
Of Counsel for Plaintiff in Error.

Filed in office March 20, 1917. Z. D. Harrison, C. S. C. Ga.

81 In the Supreme Court of Georgia, Atlanta Circuit, March Term, 1916.

No. 4.

UNION TANK LINE COMPANY, Plaintiff in Error,

vs.

WILLIAM A. WRIGHT, Comptroller General, Defendant in Error.

Comes now Union Tank Line Company, the plaintiff in error above named, on this 20th day of March, A. D., 1917, and files and presents to this Court, its petition, praying for the allowance of a writ of error intended to be urged by it; and praying further that a duly authenticated transcript of the records, proceedings and papers upon which the judgment herein was rendered, may be sent to the Supreme Court of the United States; and that such other and further proceedings may be had in the premises as may be just and proper; and upon consideration of the said petition, it is ordered by this Court that a writ of error be allowed, as prayed, provided, however, that said Union Tank Line Company, the plaintiff in error, give bond according to law in the sum of one thousand ($1,000.00) dollars, which said bond shall operate as a supersedeas bond.

In testimony whereof, witness my hand this 20th day of March, A. D., 1917.

BEVERLY D. EVANS,
Acting Chief Justice of the Supreme Court of Georgia.

Filed in office March 20, 1917. Z. D. Harrison, C. S. C. Ga.

82 In the Supreme Court of Georgia, Atlanta Circuit, March Term, 1916.

No. 4.

UNION TANK LINE COMPANY, Plaintiff in Error,

vs.

WILLIAM A. WRIGHT, Comptroller General, Defendant in Error.

And now at the same time that the above named plaintiff in error presents its petition for writ of error, it comes by its said attorneys,

whose names are hereunto signed, and files with said petition for writ of error, this assignment of errors, and says that in the record and proceedings in the above entitled cause, and matter and judgment therein mentioned, there is manifest error in this, to-wit:

1st. That the said Supreme Court of Georgia erred in affirming the judgment of the Superior Court of Fulton County, Georgia, which refused to enjoin the assessment for taxation made for the years 1907 to 1914 inclusive, upon the amount of said assessment of two hundred, nin-ty-one thousand, one hundred and nin-ty-six ($291,196.00) dollars for each of said years from 1907 to 1914 inclusive, and in rendering the judgment against this plaintiff in error complained of as error in the petition for writ of error to this Court, because the facts in said case show that the levying of said assessment for said amount embraces therein the value of at least three hundred and fifty (350) cars, in each year, in excess of the number of cars plaintiff actually had in the State of Georgia for the time said tax was assessed and that such assessment and the collection of taxes thereon assesses and collects taxes upon property not subject to taxes in the State of Georgia, and takes the property of this plaintiff in error without due process of law and denies to this plaintiff in error the equal protection to the law, in violation of the fourteenth amendment of the Constitution of the United States of America.

83 2nd. That the said Supreme Court of Georgia erred in not reversing the judgment of said Superior Court of Fulton County, Georgia, in this cause, and in rendering the judgment against the plaintiff in error complained of as error in the petition for writ of error to this Court, because the facts of said case as decreed show that the said William A. Wright, as Comptroller General *General*, did not attempt to ascertain, nor did he ascertain, what property of the plaintiff was in the State of Georgia, upon the dates and during the time fixed for the assessment of property in each of the years 1907 to 1914 inclusive, nor did he assess said sum of two hundred and nin-ty-one thousand, one hundred and nin-ty-six ($291,196.00) dollars in each of said years upon any ascertainment or attempt to ascertain the value of the property of defendant actually in the State of Georgia, but the assessment was made solely by the application of the percentage between the number of miles of railroad tracks in the State of Georgia traversed by cars of the Union Tank Line Company as compared with the total number of miles of railroad tracks traversed by the cars of the Union Tank Line Company everywhere. The facts of this case as decreed show that such assessment in each of said years and the levy of taxes upon such assessment had the effect of levying taxes upon at least three hundred and fifty (350) cars of the value of eight hundred and thirty ($830.00) dollars per car, more than the average number of cars of the Union Tank Line Company in said State during each of said years respectively, which said action of the Comptroller General and said assessment was a taking of the property of the said Union Tank Line Company without due process of law and was a denial to

it of *of* the equal protection of the law in violation of the fourteenth amendment of the Constitution of the United States.

3rd. That the said Supreme Court of Georgia erred in not reversing the judgment of said Superior Court of Fulton County, Georgia, and in rendering the judgment against this plaintiff in error complained of as error in the petition for writ of error
84 to this Court, because the Statute of the State of Georgia under which the Comptroller General has assessed the property of the Union Tank Line Company in the State of Georgia, for each of the years 1907 to 1914 both inclusive, at the sum of two hundred and nin-ty-one thousand, one hundred and nin-ty-six ($291,196.00) dollars, is unconstitutional and void, under the fourteenth amendment of said Constitution of the United States, and has the effect of taking the property of the said Union Tank Line Company without due process of law and denying to it the equal protection of the law, because the said Statute requires the Comptroller General of the State of Georgia, to fix as the property of the taxpayer the percentage of its entire property that is shown by the ratio between the number of miles of railroad track located in Georgia, traversed by the cars of the taxpayer with the total number of miles of railroad track elsewhere traversed by such taxpayer's cars and to fix as its value a like percentage of its entire property wherever situated, while said Statute does not provide any method by which any property can be excepted or by which the taxpayer is permitted to show that this method of assessment for taxation has the effect of taking much more of the property of the taxpayer than is located in the State of Georgia, and has the effect of taxing property located out of the State of Georgia when such is the case and that, therefore, it denies to the said taxpayer and does and did deny to this plaintiff in error, the equal protection of the law and took the property of this defendant without due process of law and is in violation of the fourteenth amendment of the Constitution of the United States.

Wherefore, the said Union Tank Line Company, plaintiff in error as aforesaid, prays that the judgment of the said Supreme Court of Georgia be reversed and set aside, and that such further proceedings in said case shall be had as to justice shall appertain.

ALEX. C. KING,
Of Counsel for Plaintiff in Error.
KING & SPALDING,
CAMPBELL, HARDING & PRATT,
Attorneys for Plaintiff in Error.

Filed in office March 20, 1917. Z. D. Harrison, C. S. C. Ga.

85 In the Supreme Court of Georgia, Atlanta Circuit, March Term, 1916.

No. 4.

UNION TANK LINE COMPANY, Plaintiff in Error,

vs.

WILLIAM A. WRIGHT, Comptroller General, Defendant in Error.

STATE OF GEORGIA,
Fulton County:

Know all men by these presents, That we, Union Tank Line Company, a corporation, as principal, and Fidelity and Deposit Company of Maryland, a corporation existing under the laws of Maryland, as surety, are held and firmly bound unto William A. Wright, Comptroller General, defendant in error as aforesaid, in the sum of One Thousand ($1,000.00) Dollars, for the payment of which well and truly to be made, to the said William A. Wright, Comptroller General, defendant in error as aforesaid, his successors, legal representatives and assigns, we bind ourselves, and our successors, jointly and severally, firmly by these presents.

Signed, sealed and delivered this 20th day of March, A. D. 1917.

Whereas, the above named principal, plaintiff in error, has prosecuted a writ of error in the Supreme Court of the United States to reverse the judgment rendered in the above entitled action by the Supreme Court of the State of Georgia;

Now, therefore, the condition of this obligation is such that if the above named plaintiff in error shall prosecute the said writ of error to effect, and answer all costs and damages if it shall fail to make good this plea, then this obligation to be void, otherwise to remain in full force and effect.

UNION TANK LINE COMPANY, [L. S.]

By the Attorney of Record,

ALEX. C. KING.
FIDELITY AND DEPOSIT CO. OF MD.,
By G. ARTHUR HOWELL, *Agent.*

86 Executed in the presence of:
ISIDORE S. MOSS,
Notary Public, Fulton County, Ga.

The foregoing bond and sureties are accepted and approved. This 20 day of March, 1917.

BEVERLY D. EVANS,
Acting Justice of the Supreme Court of Georgia.

Filed in office March 20, 1917. Z. D. Harrison, C. S. C. Ga.

87 In the Supreme Court of Georgia, Atlanta Circuit, March Term, 1916.

No. 4.

UNION TANK LINE COMPANY, Plaintiff in Error,

vs.

WILLIAM A. WRIGHT, Comptroller General, Defendant in Error.

It is stipulated between counsel for plaintiff and defendant in error in the foregoing case that the following shall be sent up by the Clerk of the Supreme Court of the State of Georgia to the Supreme Court of the United States as the transcript of the record in the above stated case on the writ of error to the said Supreme Court of the United States.

1. The original petition.
2. The answer of the defendant.
3. ——.
4. The decree rendered of the Superior Court of Fulton County appealed from.
5. The bill of exceptions.
6. The judgment of the Supreme Court of Georgia in said case.
7. The opinion rendered in said case, including dissenting opinions, and including the opinions rendered on the writ of error in this case to the October Term, 1914, being No. 16, Atlanta Circuit, of said October Term, 1914.
8. The petition for writ of error, order allowing same, writ of error, bonds with entries thereon, citation, and acknowledgment of service.

ALEX. C. KING,
Attorney for Plaintiff in Error.
CLIFFORD WALKER,
Attorney General, Counsel for Defendant in Error.

Filed in office March 20, 1917. Z. D. Harrison, C. S. C. Ga.

88 Supreme Court of the State of Georgia.

Clerk's Office, Atlanta, Ga.,
March 31, 1917.

I Hereby Certify, That the foregoing pages hereto attached contain the original writ of error, citation and acknowledgment of service thereof, together with a true and complete transcript of those parts of the record in the case of Union Tank Line Company v. William A. Wright, Comptroller General of the State of Georgia, which are required by the praecipe of the petitioner for writ of error to be sent to the Supreme Court of the United States, as appears from the records and files of this office.

Witness my signature and the seal of the Supreme Court of Georgia hereto affixed the day and year above written,

[Seal of the Supreme Court of the State of Georgia, 1845.]

Z. D. HARRISON,
Clerk of the Supreme Court of Georgia.

Endorsed on cover: File No. 25,893. Georgia Supreme Court. Term No. 1063. Union Tank Line, plaintiff in error, vs. William A. Wright, Comptroller General of Georgia. Filed April 9th, 1917. File No. 25,893.

JAN 6 1919
JAMES D. MAHER,
CLERK.

IN THE

Supreme Court of the United States

OCTOBER TERM, 1918.

No. 170

UNION TANK LINE COMPANY,
Plaintiff in Error,

against

WILLIAM A. WRIGHT, Comptroller General of Georgia,
Defendant in Error.

Brief for the Plaintiff in Error.

DOUGLAS CAMPBELL,
Of Counsel for Plaintiff in Error.

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SUPREME COURT OF THE UNITED STATES.

UNION TANK LINE COMPANY, Plaintiff-in-Error, *against* WILLIAM A. WRIGHT, Comptroller General of Georgia, Defendant-in-Error.	No. 170. October Term, 1918.

IN ERROR TO THE SUPREME COURT OF THE STATE OF GEORGIA.

BRIEF FOR THE PLAINTIFF IN ERROR.

Statement.

This is an action brought by the Union Tank Line Company for equitable relief in regard to a property tax assessed by the Comptroller General of Georgia, for the years 1907 to 1914, on the cars of the company, taking as the basis of assessment such proportion of the entire value of all the cars of the company as the number of miles of railroad line over which its cars were run in Georgia bore to the number of miles of railroad lines everywhere over which its cars were run. The equitable relief sought is an injunction against the collection of the tax as assessed beyond the amount paid as the proper tax on the cars by the plaintiff to the defendant. The grounds of the action are that the assessment as made would have the effect of taxing property of the plain-

tiff outside of the State, and that the assessment and the statute under which it was made (Section 990 of the Civil Code of Georgia) were unconstitutional.

There was also involved in this action in the courts below a franchise tax, which had been assessed against the plaintiff, by the same method of apportionment, under Sections 1019-1021 of the Georgia Code. This was disposed of, however, by the decision of the trial court, affirmed in this respect by the appellate court, that the plaintiff was not subject to the franchise tax, the court having found, upon the evidence before it, that the plaintiff was not exercising any franchise in Georgia. The collection of the franchise tax was enjoined.

There were two trials. The first trial resulted in a decree in favor of the plaintiff, not only as to the franchise tax, but also as to the tax on cars. The decree was affirmed by the Supreme Court of Georgia as to the franchise tax, but reversed as to the car tax. The case was again submitted to the trial court, on the same pleadings and evidence as before, and a decree was entered in conformity with the rulings of the higher court. This decree was affirmed by the Supreme Court of Georgia, and its final judgment to that effect was entered.

Specification of Errors.

The case is here to correct the error, if any, of the court below in failing to hold with respect to the tax on cars that the assessment thereof as made by the defendant-in-error and the statute under which it was made violate the Fourteenth Amendment of the Constitution of the United States.

The Assignment of Errors is found at page 46 of the Record.

Facts.

The answer of the defendant (Record, p. 30) admits the truth of all the allegations of fact contained in the petition. (Record, p. 23.) No evidence was introduced on the trial but the case was submitted upon the pleadings and an agreed statement of facts. (Record, p. 1.) The facts therefore have never been in dispute. So far as material here, they are as follows:

The Union Tank Line Company is a New Jersey corporation, engaged in the business of owning tank cars and leasing them to shippers of petroleum oils throughout the United States, who use them as private cars for the shipment of their products over the various lines of railroads in the United States. (Record, p. 1.) This company is not engaged in the business of transportation; it does not handle any of the commodities transported in its cars; it neither loads, unloads, nor moves the cars, nor handles them in any way. It simply furnishes the cars to shippers under a contract of lease, receiving rental therefor from the shipper. It also receives the mileage allowance of ¾ of a cent a mile paid by railroads over which the cars are run. (Record, p. 2.)

It has not, and never has had, any agent or agency or place of business or office of any sort in Georgia, and does no business in that State. (Agreed Statement, Record, p. 2.) It has no relation to or connection with any business done by anyone else in Georgia. (Agreed Statement, Record, p. 2.) It has made no contract in Georgia for furnishing cars therein or sending them into the State. (Record, p. 2.)

Its business office is in New York City, and through this office it made a contract with the Standard Oil Com-

pany of Kentucky, through the latter's chief office in Louisville, Kentucky, to furnish that oil company with tank cars under lease. The Standard Oil Company of Kentucky does business in Kentucky, Georgia, Florida and several other States. It has a depot at Savannah, Georgia, and one at Jacksonville, Florida, and a number of depots in other States. (Record, p. 2.)

The only cars of the Union Tank Line Company which go into Georgia are those leased to the Standard Oil Company of Kentucky. (Record, p. 2.) Such of these cars leased to the Standard Oil Company of Kentucky as go into Georgia are there only temporarily, passing in and out of the State. (Record, p. 2.)

The average number of these cars in Georgia during the year 1913 was 57. (Record, pp. 2, 29.)

The Union Tank Line Company never considered itself liable to taxation in Georgia, and was never asked to make any return for taxation there, until early in 1914, when, thinking it might owe the State of Georgia a tax return, it voluntarily took the matter up by correspondence, and asked for forms of reports to be made by equipment companies. (Record, p. 3.)

Up to this time the State of Georgia had never attempted to tax any equipment company, and its assessing authority, the Comptroller General of the State, had no forms of returns for equipment companies, but forwarded sleeping car blanks. Until then, no equipment company had ever made a return for taxation in Georgia. (Record, pp. 3 and 4.)

On March 12, 1914, the Union Tank Line Company made a return on the blank furnished showing for the year 1913

Real estate: None.

Total value of its entire equipment, $10,518,333.16.

Number of miles of railroad lines in Georgia over which cars are run, 6,976½.

Total number of miles of railroad lines over which cars are run, 251,999.

Value franchise: No franchise.

Total value of property taxable in Georgia, $47,310.

Union Tank Line Company had an average of 57 tank cars in Georgia during 1913 which at a value of $830 per car, equals—Tax: $47,310.

The Comptroller General acknowledged receipt of this return by letter dated March 16, 1914, in which he said:

"Returns should of course also be made for back years, as this is the first year your Company has ever made a return for taxation. Unfortunately, our courts have held that back taxes can be collected for only seven years. I, therefore, formally call upon you to make returns for the years 1907, 1908, 1909, 1910, 1911, 1912, 1913. Special blanks are now being prepared for 'Equipment Companies' and I will mail you a supply for the years mentioned within the next few days—just as soon as they are received from the printer.

As to the return filed, you have furnished the data desired, but have made an error in the application of the same. After giving the mileage for the Company everywhere and for Georgia, you then go ahead and assign 57 tank cars for this State and value them at $830.00 each, making the total for Georgia, $47,310. This is an incorrect method. If you were to be allowed to merely assign so many cars to the State for taxation there would be no need for the mileage figures to be furnished.

The valuation to be assigned to Georgia must be in the same proportion to the valuation for the entire company, as the mileage in Georgia bears to the entire mileage everywhere. Thus, $251,999: 6,976: $10,518,333:—?

The $10,518,333 multiplied by 6,976.5 gives 73,381,150,174.5, which divided by 251,999 gives $291,196—the proper valuation to be assigned to Georgia.

Or to work it out by percentage instead of proportion: 6,976.5 the Georgia mileage, is 2.76846 per cent. of 251,999, the entire mileage. Georgia is therefore entitled to 2.76846 per cent. of the entire valuation. This per cent. of $10,518,333 is $291,195.84 or the same sum arrived at by proportion, if we call the 84 cents an even dollar. Unless decimals are extended almost indefinitely, there is of course always this slight difference.

The correct valuation for Georgia of your physical property is therefore $291,196—under the return you have made. A franchise value should also be returned. And whatever the valuation you place on the franchise for the entire country, 2.76846 per cent. of same must be assigned to Georgia. Thus, if you should value your franchise at $1,000,000, the franchise value to be assigned to Georgia would be $27,685.

Please let me hear from you in regard to the franchise. The returns for the seven back years you need not bother with until you receive the blanks mentioned in the foregoing.

Yours very truly,

(Signed) COMPTROLLER GENERAL."

(Record pp. 6 and 7.)

On April 7, 1914, the Comptroller General, getting no answer from the Union Tank Line Company to his demand that it report the value of its entire franchise, proceeded to enter assessments against it. He assessed its physical property for the year 1914, on the return made, at $291,196, and its franchise at $27,685, which he doubled for a default in return, and at the same time he entered the same assessments against it for the back years 1907-1913, a total assessment of $346,566 for each year. (Record, pp. 7-8.)

He then notified the Company of his action, and that, if dissatisfied with the valuation, it could "submit to arbitration the question of the values of your Company's property." Unless the Company acted in twenty days "the assessments will stand." (Record, p. 7.) The Company did not offer to arbitrate.

Certain correspondence ensued, and on May 21, 1914, the Comptroller General, Attorney General Grice and Judge John C. Hart, had a conference with Alex C. King, representing the Company, in which the Company insisted that it was not subject to be taxed except on its property actually in Georgia, and that the effect of the application of the percentage of mileage was to tax it upon property not in Georgia; that the assessment for 1914 as made embraced nearly 300 cars not in Georgia and not subject to taxation, the cars in Georgia being 57. (Record, pp. 9-11.)

On May 26th the Company tendered tax returns for each of the years 1907-1913 showing the following: (Record, pp. 12-18)

Years.	Total Value of Equipment.	Total number of miles of R. R. lines over which cars are run.	Number of miles of R. R. lines in Georgia over which cars are run.	Average number of cars in Georgia.	Value of cars in Georgia.	Value of Franchise.
1907	$9,413,599.43	251,999	6976.5	31	$25,730	Nothing
1908	10,341,453.05	"	"	32	26,560	"
1909	10,035,593.02	"	"	56	46,480	"
1910	9,809,513.48	"	"	51	42,330	"
1911	9,949,004.11	"	"	48	39,840	"
1912	9,895,624.71	"	"	49	40,670	"
1913	10,518,333.16	"	"	57	47,310	"

It is agreed in the statement of facts that the above returns embraced the full number of cars in Georgia belonging to the Company for each of said years at their

full value, and that the Company had no other property in the State of Georgia. (Record, p. 19.)

The Company has paid to the Comptroller General taxes for each year at the rate of five mills (the regular tax rate for all property in Georgia) on the amounts shown as the value of its cars in Georgia in the above returns, the payment being made and received without prejudice to the rights of either party. (Record, p. 19.)

The Comptroller is demanding taxes at the rate of 5 mills on $291,196. in each year, and has notified the Company that he will issue executions against it for said taxes, besides all interest and costs, and that he will cause the property of the Company to be levied on and seized in the State of Georgia and will sell the same to coerce the payment of his claims. (Record, p. 19.) Unless the Comptroller is enjoined fom so doing, he will issue separate executions against the Company for each of said years and will cause the same to be levied on the Company's tank cars in said State from time to time. (Record, p. 19.)

ARGUMENT.

POINT ONE.

The tax assessment complained of violates the due process clause of the Constitution in that, *as shown by* the facts and figures given to the Comptroller General of Georgia by the Union Tank Line Company *in its sworn uncontradicted return, accepted by him as correct* and now agreed to be correct, it assigns to the State of Georgia for taxation property of the Union Tank Line Company outside of the State.

The Georgia statute under which this assessment was made is section 990 of the Civil Code of Georgia. It

provides that any corporation wherever organized engaged in the business of furnishing or leasing cars, which are operated, or leased or hired to be operated, on any railroads in the State, shall be deemed an "equipment company," and that every such company "shall be required to make returns to the Comptroller General under the same laws of force in reference to the rolling-stock owned by the railroads making returns in this state, (1) and the assessment of taxes thereon shall be levied and the taxes collected in the same manner as provided in the case of sleeping-cars in section 989." Section 989, in accordance with which equipment companies are to be assessed and taxed, reads:

> "Each non-resident person or company whose sleeping-cars are run in this state shall be taxed as follows: *Ascertain the whole number of miles of railroad over which such sleeping-cars are run, and ascertain the entire value of all sleeping-cars of such person or company, then tax such sleeping-cars at the regular tax rate imposed upon the property of this State in the same proportion to the entire value of such sleeping-cars that the length of lines in this State over which such cars are run bears to the length of lines of all railroads over which such sleeping-cars are run.* The returns shall be made to the comptroller-general by the president, general agent, or person in control of such cars in this State. The comptroller-general shall frame such questions as will elicit the information sought, and answers thereto shall be made under oath. If the officers above re-

(1) The only law in reference to rolling-stock of railroads is section 1031, which reads:

"Railroad companies operating railroads lying partly in this State and partly in other states shall be taxed as to the rolling stock thereof and other personal property appurtenant thereto, and which is not permanently located in any of the states through which said railroads pass, on so much of the whole value of rolling-stock and personal property as is proportional to the length of the railroad in this state, without regard to the location of the head office of such railroad companies."

ferred to in the control of such sleeping-cars shall fail or refuse to answer, under oath, the questions so propounded, the comptroller-general shall obtain the information from such sources as he may, and he shall assess a double tax on such sleeping-cars. If the taxes herein provided for are not paid, the comptroller-general shall issue executions against the owners of such cars, which may be levied by the sheriff of any county of this State upon the sleeping-car or cars of the owner who has failed to pay the taxes."

It is obvious that it is intended by the above statute to tax *the cars as such* of equipment companies. There is no attempt to tax a proportion of the company's good will or other intangible property under the so-called "unit rule" of valuation.(1) No intangible property, as measured by the capital stock of the company, or the value of its shares, or its earnings, or otherwise, is to be included in the terms of the proportion. The sole purpose is to apportion to the State of Georgia for taxation a percentage of the physical property in cars of the company. To this end, the Comptroller General is to

(1) There is a separate statute in Georgia for the taxation of the intangible property of equipment companies (Civil Code, Sections 1019-1021). It provides that the "franchise" of such a company "shall be taxed at the same rate as other property upon the value thereof as returned, * * * the tax to be levied and collected as now provided in case of the property of railroad companies" (Section 1021). As was said in *Western Union Telegraph Co.* v. *Gottlieb*, 190 U. S. 412, 421: "The right to exist—the franchise—of the defendant was property, and was subject to taxation, either directly, in the proportion that the portion of the franchise exercised in this State bore to the proportion of the franchise exercised in all other States, or indirectly, as was done in Massachusetts and as was done here, by being impressed upon the tangible property owned by it, thereby increasing its value." The Court is here referring to the "unit rule" of valuation, under which a share of the intangible property of an interstate carrier may be apportioned to a State to enhance the taxable value of its tangible property therein. (*Chicago B. & Q. Ry. Co.* v. *Babcock*, 204 U. S. 585, 598; *Adams Express Co.* v. *Ohio*, 165 U. S. 194; *Fargo* v. *Hart*, 193 U. S. 490.) A State may tax such intangible property directly as a franchise, or indirectly under the "unit rule". Manifestly, it cannot do both.

ascertain the entire value of "all cars" of such company and then is to tax "such cars" at the regular tax rate for all property in the State in the same proportion to the entire value of such cars that the length of lines in Georgia over which the company's cars are run bears to the length of lines of all railroads over which its cars are run. He is to frame such questions as will elicit the information sought, which are to be answered under oath.

At the request of the Union Tank Line Company the Comptroller General in 1914 forwarded blank forms of tax returns to be filled out by the company for the year 1913. These were forms prepared by the Comptroller General for sleeping-car companies, with the words "Sleeping Car Company" crossed out and "Equipment Company" written in. (Record, p. 4.)

The Company filed its return for the year 1913 on the form thus supplied. In answer to the questions propounded therein it gave the total value of its equipment everywhere, figured at $830. per car, $10,518,333.16; the total number of miles of railroad lines everywhere over which its cars were run, 251,999; and the number of miles of railroad lines in Georgia over which its cars were run, 6,976½. It also, not in answer to any question, but of its own motion, showed the following fact in the return: *"Union Tank Line had an average of 57 tank cars in Georgia during 1913, which, at a value of $830. per car, equals—Tax, $47,310."* (Record, p. 5.)

The Comptroller General entirely disregarded the evidence contained in the return of the actual number of the Company's cars in Georgia, and, following the statute, assessed the Company's cars at 6,975.5/251,999 of $10,518,333.16 equals $291,195.84—*a valuation embracing 350 more cars than the Company had in Georgia in 1913.*

This assessment was entered April 7, 1914, and at the same time the Comptroller General entered the same assessment for the back years 1907-1912 inclusive.

The return filed by the Union Tank Line Company was made under oath. The facts and figures therein shown have never been disputed, and it is agreed that they were correct. They were accepted as correct by the Comptroller General when the assessment was made. In acknowledging receipt of the return he wrote:

> "As to the return filed, you have furnished the data desired, but have made an error in the application of the same. * * *
>
> "The correct valuation for Georgia of your physical property is therefore $291,196.00 under the return you have made." (Record, pp. 6-7.)

The agreed statement of facts shows the following:

"On April 7th, 1914, when the defendant entered an assessment in his office of property and franchises of the plaintiff as shown hereinbefore, he had no other information for any of the years 1907-1914 inclusive than was contained in the said return filed by plaintiff on March 16, 1914, and embraced in this statement and which was refused by the defendant, and did not know what cars defendant had had in Georgia during any of said named years, nor did he ascertain the value of such cars, but his act was taken on such information hereinbefore shown; and that the assessment so entered by the defendant in his office against the plaintiff's property, during said period for each of said years embraces the valuation of about 300 cars in excess of what plaintiff actually had in the State of Georgia during said years, of the approximate value of $250,000 each year; and that the true value of a tank car is about $830 per car; that

for the year 1914 the assessment entered against plaintiff by defendant covered the value of at least 350 cars in excess of the number of cars plaintiff actually had in the State of Georgia for the time the said tax was assessed." (Record, pp. 11-12.) Later in the agreement occurs the following: "The foregoing returns tendered by the plaintiff and rejected by the defendant embrace the full number of cars in said state belonging to the plaintiff for each of the said years, at their full value, and the same are embraced in Schedule A referred to and the plaintiff has during each of said years had no other property in the State of Georgia," etc. (Record, p. 19.) In the petition there is the following allegation: "Plaintiff avers that the mileage of railroads traversed by its cars in the several states has no relation whatever to the number of cars in use or located in such State." (Record, p. 26.) The answer "admits the allegations of fact contained in each of the several paragraphs of the petition but denies the conclusions of law therein set up." (Record, p. 30.)

Thus the exact method of arriving at the assessment, the whole information upon which it was made, and the effect of it, are definitely established. The Comptroller General, having before him the proof that the actual amount of taxable property of the company in Georgia was 57 tank cars, and having no other information than that given in the company's return, proceeded to apportion property of the company to the State for taxation solely by means of the basis of apportionment prescribed in the statute, which admittedly had no relation to the amount of the company's property in the State, and thereby arrived at an assessment six times the value of the property shown to be within his jurisdiction. As is said in the dissenting opinion in this case (Lumpkin

and Hill, J. J.) "We are constrained to think that the agreement shows that what has been done would have the effect of taxing property outside of the State". (p. 41.)

Aside from the question whether the statute under which the assessment was made can be sustained (Points Two and Three), the assessment itself violates the Fourteenth Amendment of the Constitution.

Pittsburgh, etc., Railway Co. v. *Backus*, 154 U. S. 421, 432;
Fargo v. *Hart*, 193 U. S. 490;
Raymond v. *Chicago Traction Co.*, 207 U. S. 20.

In *Fargo* v. *Hart*, *supra*, the statute in Indiana applying the unit rule of valuation with a mileage basis of apportionment to express companies had been sustained as constitutional, and the question was whether the assessment made under the statute was in the particular case contrary to the Fourteenth Amendment. The company relied upon the fact that it made a return to the Board of Assessors, setting forth in detail what its property was, where it was situated and how used, and that the value and nature of the property was not disputed; and it contended that when it was made apparent from the facts thus shown that a disproportionate quantity of its property, not used in its business, was outside of Indiana, the Board was not at liberty to spread the whole value over the line equally and tax by mileage. *Held* that it sufficiently appeared that the Board took into account property which it had no right to take into account in fixing the assessment; that it was not a mere case of over-valuation, but of an assessment made on unconstitutional principles, and that the assessment was void.

POINT TWO.

The statute under which the assessment complained of was made is unconstitutional in that it adopts a basis of apportionment in the taxation of property of equipment companies which has no relation whatever to the amount of property of such companies actually within the State.

The basis of apportionment adopted by the statute is to take that percentage of the entire value of all the cars of an equipment company which the number of miles of *railroad lines* within the State over which its cars are run bears to the total number of miles of *railroad lines* everywhere over which its cars are run.

In the petition: "Plaintiff avers that the mileage of railroads traversed by its cars in the several States has no relation whatever to the number of cars in use or located in such State". (p. 26.) The answer "admits the allegations of fact contained in each of the several paragraphs of the petition, but denies the conclusions of law therein set up". (p. 30.) [a]

It does not need this admission on the part of the Comptroller General to show that the ratio of line mileage within and without the State has no relation to or bearing upon the number of cars or actual value of the property of an equipment company within the State.

(1) It is obvious that a single car making a single trip within a State may traverse as many miles of railroad line as a thousand cars making daily trips within the State during the tax year. In order, therefore, that

(a) No evidence was introduced in this case; it was submitted on the petition and answer and an agreed statement of facts. (Record p. 1.)

the ratio of line mileage within and without a locality should be even *prima facie* a measure of the number of cars in use in that locality, it must *first* be assumed that the distribution of cars in use over all the lines traversed is uniform.

Such uniformity cannot possibly be assumed in the case of an equipment company. It differs in this respect from a railroad or sleeping-car company or any other company as to which a tax by line mileage has been upheld. A railroad, for instance, is doing business wherever its line extends, and, in the absence of special circumstances, its business and its property used therein may be supposed to be evenly distributed over its line, and so be proportionate in any locality to the length of line in that locality. (Fargo *v.* Hart, 173 U. S. 490, 500; Pittsburgh Ry. Co. *v.* Backus, 154 U. S. 421, 431.)

But an equipment company does not do business in the several States in which its cars are run. (It has been decided in this case that the Union Tank Line Company is not doing business in Georgia.) It has no contract, exclusive or otherwise, with railroads. It does not operate its cars. It leases its cars to shippers, who use them in *their* business. *The number of an equipment company's cars in a particular State depends exclusively upon the number of its lessees doing business in that State and the size of their business.*

An equipment company might well have a single lessee operating ten cars in one State, while in another State, having the same length of railroad lines within its borders, it might have two or more lessees operating a hundred cars. Suppose such a case, and that, *as would be most probable,* the length of line traversed by its cars in the two States in the course of the tax year were the same. According to the rule laid down in the Geor-

gia statute, the assessed value of the property of the company in each of the two States would be the same, although the actual values would differ as ten to one.

In the record we find the following (pp. 5, 12-19):

Union Tank Line Company.

Year	No. of Cars	Track Mileage Traversed in Georgia	Total Number of Cars	Total Track Mileage Traversed.
1907	31	6,976½	11,341	251,999
1908	32	6,976½		251,999
1909	56	6,976½		251,999
1910	51	6,976½		251,999
1911	48	6,976½		251,999
1912	49	6,976½		251,999
1913	57	6,976½		251,999
1914	57	6,976½	12,600	251,999

So that while the number of the company's cars in Georgia varied from 31 to 57 during the years 1907-1914, the miles of track traversed in Georgia remained exactly the same; and while the total number of the company's cars varied from 11,341 to 12,600 during the same period, the miles of track traversed by all its cars everywhere remained exactly the same. Under the Georgia statute, therefore, the Union Tank Line Company's assessment would vary from year to year in Georgia solely according to the increase or decrease of the total number of its cars everywhere, and not at all in accordance with the increase or decrease of its property within the State.

It is not surprising to find that this statute has resulted in assessing the Union Tank Line Company, in effect, upon 300 cars, (value about $250,000.) over and above the actual number in the State for each of the tax years—an excess valuation of about 600 per cent.

(2) The Georgia statute extends to equipment companies a rule of apportionment theretofore in force in Georgia with regard to railroads and sleeping-car companies. It apportions to the State for taxation a percentage of *all* the cars of the company. This must be upon the theory that all the cars of an equipment company, like those of a railroad or of a sleeping car company doing business partly in and partly out of the State, do or may come into the State in the course of the tax year.

In the case of an equipment company such is not the fact. The definition of an equipment company is expressly framed in the statute so as to include companies not doing business in the State. "Any * * * * corporation * * * * whose principal business is furnishing or leasing any kind of railroad cars * * * *, or in whom the legal title in any such cars is vested * * * * but which are operated, or leased or hired to be operated, on any railroads in this State, shall be deemed an equipment company." The definition includes companies like the Union Tank Line whose cars are leased to others and when under lease come into the State. Obviously, it is only those particular cars which are leased to a shipper doing business in the State that do or may come into the State. Thus, the Union Tank Line Company had, in 1913, 12,600 cars. It leased say 500 of those cars to the Standard Oil Company of Kentucky, which was its only lessee doing business in Georgia. A certain proportion of the 500 cars, 57 in 1913, were habitually in the State, but the remaining 12,000 never did or could enter. Yet the statute taxes a proportion of the entire 12,600.

Not only, therefore, is the percentage prescribed by the statute irrelevant, but the total amount of property

of which such percentage is taken in order to arrive at an assessment has also no relation to property within the State.

(3) There is no necessity for a percentage rule in taxing equipment companies. The actual average number of cars in a State can conveniently be shown, as they were shown by the Union Tank Line Company in Georgia for the years 1907-1914, and as they are constantly shown in the various States which have adopted the method of assessing *directly* the average number of cars in the State.

> *American Refrigerator Co.* v. *Hall*, 174 U. S. 70;
> *Union Refrigerator Transit Co.* v. *Lynch*, 177 U. S. 149.

If a percentage rule were necessary, a *car mileage* rule, as distinguished from a railroad mileage rule, would serve the purpose. The number of miles actually travelled by an equipment company's cars within and without a particular State does bear a relation to the number of its cars employed in the State, since it is possible to assume that all of its cars in active service are run on the average a uniform number of miles a day.

Finally.

There was at one time a divergence of opinion as to whether cars, such as sleeping-cars, refrigerator cars, and the like, owned by companies other than railroads, but operated over railroad lines as instrumentalities of interstate commerce and only transiently present in any one State, could be deemed to have a *situs* in the State

for tax purposes. (*Pullman Palace Car Co.* v. *Pennsylvania*, 141 U. S. 18, 30.) It was recognized, however, that while the specific cars might be constantly in transit from State to State, and no one of them be subject to taxation in the State through which it was passing, yet there would be continuously present in the State an ascertainable though varying number of such cars, which would afford a substantial entity that could be deemed permanently present in the State for purposes of taxation. And the difficulty was finally solved by adopting definitely the principle of taxing the "average number of cars in habitual use" in the State during the year.

Marye v. *B. & O. R. R. Co.*, 127 U. S. 117;
American Refrigerator Co. v. *Hall*, 174 U. S. 70, 72;
Union Refrigerator Transit Co. v. *Lynch*, 177 U. S. 149, 154;
Judson on Taxation (2nd Ed.), Sec. 239.

It may well be doubted whether such average number of cars can ever be properly ascertained by means of a rule of proportion where the owner of the cars is not doing business in the State and so can only be taxed on its tangible property actually in the State—for the reason that no rule of proportion is accurate, and an arbitrary and approximate basis of assessment should only be adopted where the actual amount and value of the property cannot be directly ascertained. Wherever a rule of proportion has been upheld as a basis of assessment, it has been in connection with the assessment of intangible as well as tangible property. (*State Railroad Cases*, 92 U. S. 575; *Pullman Palace Car Company* v. *Pennsylvania*, 141 U. S. 18; *Pittsburgh, etc., Ry. Co.* v. *Backus*, 154 U. S. 421, 431.)

However this may be, it is at any rate beyond doubt or question established, that, where a rule of proportion *is* used, it must, in order to be valid under the Constitution, bear such a relation to the property in and out of the State as to result, presumptively at least, in a *fair and equitable* apportionment.

> *Pullman Palace Car Co.* v. *Pennsylvania,* 141 U. S. 18, 26;
> *Pittsburgh, etc., Ry. Co.* v. *Backus,* 154 U. S. 421, 431;
> *W. U. Tel. Co.* v. *Taggart,* 163 U. S. 1, 26;
> *Adams Express Co.* v. *Ohio,* 165 U. S. 194, 220.

We do not need to argue that this requirement is not met where the basis of apportionment adopted has no relation whatever to the amount of the property actually within the State.

POINT THREE.

The statute is unconstitutional in that it prescribes an arbitrary and inflexible rule of apportionment, affording no opportunity to the taxpayer to show that the method of assessment directed would work an injustice in the particular case.

The statute provides:

> "Each non-resident * * * company whose sleeping-cars are run in this state *shall be taxed as follows:* ascertain the whole number of miles of railroad over which such sleeping-cars are run, and ascertain the entire value of all sleeping-cars of

such person or company, *then tax* such sleeping-cars at the regular tax rate imposed upon the property of this State in the same proportion to the entire value of such sleeping-cars as the length of lines in this State over which such cars are run bears to the length of lines of all railroads over which such sleeping-cars are run."

This does not purport to be a tax on property in the State, with a rule prescribed *as a guide* for ascertaining, merely presumptively, the amount and value of the property. It provides, on the contrary, in express terms for a *tax* on a certain proportion of the entire value of all the cars of the person or company. It is mandatory in form, and the basis of proportion which it adopts is an arbitrary one. It is inflexible, in that it gives no latitude to the assessing authority to vary the proportion or the basis thereof under the circumstances of any particular case. Under this statute the Comptroller General was required to disregard the evidence before him that the use of a mileage proportion in the case of the Union Tank Line Company would result in taxing that company on six times the amount of its property in the State. The Supreme Court of Georgia holds that in so doing "The comptroller-general followed the statute." (p. 37.)

Such a statute would be unconstitutional even though the railroad mileage basis of apportionment were *prima facie* a fair and equitable one as applied to equipment companies generally.

Pittsburgh, etc., Ry. v. *Backus*, 154 U. S. 421; at pp. 430, 431, 432;

Cleveland, etc., Ry. v. *Backus*, 154 U. S. 439; at pp. 443, 444;

W. U. Tel. Co. v. *Taggart*, 163 U. S. 1, at pp. 27, 30;

Adams Exp. Co. v. *Ohio*, 165 U. S. 194, at p. 227;
Adams Exp. Co. v. *Ohio*, 166 U. S. 185, at p. 222;
Fargo v. *Hart*, 193 U. S. 490, at p. 500.

Judson on Taxation (2nd ed.), after an extended discussion of these cases, says, Section 278:

"As incident to this unit rule of valuation with mileage apportionment, the corporation has the right to show by all proper evidence that the application of the mileage rule of apportionment to such valuation is for any reason imperfect and unjust. Thus it may show that it holds property included in such valuation as an entirety which is exempt from taxation. It may also show that its property in other States is of disproportionate value, as, for instance, that it is located in a more densely settled community, where it is proportionately more productive, or consists of terminals in large cities of other States. All such facts are relevant as bearing upon the value of the State's proportion of the entire property. *A State statute or procedure by a State under a statute, which denied the company the opportunity of proving such facts, would doubtless be held invalid.*" (Italics ours.)

Section 462:

"The principle is therefore established that while a State can only tax that part of the property and franchises of a railroad, steamboat, telegraph or other interstate corporation which is located within its limits, it can in determining the value of that part consider the value of the entire property in all the States where located as a profit-producing unit. *It cannot however determine arbitrarily that the ratio of the mileage in the State to the total mileage is that part of the total value represented by the*

property within the State. It must consider all the facts which are offered, which tend to show what part of the aggregate value is actually within that jurisdiction. The so-called unit and mileage rules therefore when applied to the valuation of interstate properties, are merely admissible rules to assist in the determination of the value of the property actually employed in the State. *It is clear that if the State should refuse to consider such facts, or if for any reason, either in the statute as construed by the State Court, or in the enforcement of it by the State tribunal, it should appear that the value of the property outside of the State was included in the assessment, there would be a denial of due process of law.*" (Italics ours.)

What is true in this respect of an assessment by mileage proportion under the "unit rule", would of course be true where a mileage proportion is adopted to ascertain what percentage of tangible property employed in interstate commerce is situated in a particular State.

POINT FOUR.

The question at issue in this case was not one that arbitration could decide.

Provision is made by statute in Georgia for arbitration where a dispute arises as to the correctness of the values or amounts of property given by a prospective taxpayer in his tax return. (Civil Code, Sec. 1050.)

There was no such dispute in this case. The value and amount of the property shown in the return of the Union Tank Line Company were accepted as correct by the

Comptroller General. The only question at issue between them was whether the assessment of the property in a certain proportion prescribed by the statute was constitutional in principle.

This was not a question that arbitrators could decide, nor does the Georgia Code provide for the arbitration of such a question, or of any question other than as above stated. (All of the sections of the Code of Georgia relating to arbitration are printed at the end of this brief.)

Conclusion.

The judgment of the Supreme Court of Georgia should be reversed as to the tax on the cars of the plaintiff in error, with direction that the collection of such tax for the years 1907 to 1914 beyond the amount already paid be enjoined.

December 20, 1918.

Douglas Campbell,
Of Counsel for
Plaintiff in Error.

Appendix.

Civil Code of Georgia.
Arbitration of Differences.

Sec. 1045. (Sec. 807.) Differences Arbitrated, How. Whenever the comptroller-general shall be dissatisfied with a return for taxation required by law to be made to him by any corporation, company, person, or institution, and shall make an assessment which is not satisfactory to the officer or person making such return, and two arbitrators are chosen, one by the comptroller-general and the other by said officer or person, if said arbitrators fail to select an umpire within thirty days after receiving notice of their appointment, the Governor shall appoint two arbitrators, who, with the arbitrator selected by said officer or person representing the corporation, company, or institution, shall determine the question of amount or value, as the case may be, and their award shall be final.

Sec. 1046. (Sec. 808.) Arbitration to Assess Tax Against Railroad, Express, Sleeping-Car, and Telegraph Companies. In all cases of disagreement between the comptroller-general and any railroad or express company, sleeping-car companies, and telegraph companies owning property in this State, as to the taxable value of their said property, where said differences are referred to arbitration, the comptroller-general shall appoint any one of the railroad commissioners to act as arbitrator for the State, in each case, and it shall be the duty of said railroad commissioner, when thus appointed, to perform the duty of arbitrator without any additional compensation.

Returns to Comptroller, Assessments in Case of Difference.

Sec. 1050. (Sec. 812.) Returns to Comptroller Must be Itemized. Whenever corporations, companies, persons, agencies, or institutions are required by law to make returns of property, or gross receipts, or business, or income, gross, annual, net, or any other kind, or any other return, to the comptroller-general, for taxation, such return shall contain an itemized statement of property, each class or species to be separately named and valued, or an itemized account of gross receipts, or business, or income, as above defined, or other matters required to be returned, and in case of net income only, an itemized account of gross receipts and expenditures, to show how the income return is ascertained, and such returns shall be carefully scrutinized by the comptroller-general, and if in his judgment the property embraced therein is returned below its value, he shall assess, the value, within sixty days thereafter from any information he can obtain, and if he shall find a return of gross receipts, or business, or income, as above defined, or other matters required to be returned as aforesaid, below the true amount, or false in any particular, or in anywise contrary to law, he shall correct the same and assess the true amount, from the best information at his command, within sixty days. In all cases of assessment, or of correction of returns, as herein provided, the officer or person making such returns shall receive notice and shall have the privilege, within twenty days after such notice, to refer the question of true value or amount, as the case may be, to arbitrators—one chosen by himself, and one chosen by the comptroller-general—with power to choose an umpire in case of disagreement, and the award shall be

made within thirty days from the date of the appointment of an umpire, and their award shall be final. Every arbitrator or umpire chosen or appointed hereunder shall be a citizen of Georgia.

Sec. 1051. Oath of Arbitrators. All arbitrators and umpires selected to fix the values of property, where returns are made or required by law to be made to the comptroller-general, shall be sworn as follows; that is to say, in each separate matter of controversy referred to a board of arbitration in the class of cases stated, each arbitrator and umpire shall take and subscribe an oath in writing in substance as follows:

I, ..., selected and chosen as an arbitrator (or umpire) in a certain matter in controversy concerning the value of property returned by the comptroller-general of Georgia, do swear that I will diligently inquire as to the value of property and impartially decide the same, and will find and return the true market value thereof and of every part thereof according to the requirements of the law.

Sec. 1052. Powers of the Board of Arbitrators. Each board of arbitrators shall have the same power to summon witnesses and the same power to compel the production of testimony that belongs to the several superior courts, including the right to issue subpoenas duces tecum and to order parties to the controversy to produce books and papers, and shall have the right and power to require the attendance of witnesses in and from any county as the superior courts may require witnesses in criminal cases. In all cases where the production of books and papers shall be required, either by subpoena duces tecum or notice as may be appropriate, the same shall be pro-

duced within five days unless the board shall enlarge the time for cause shown.

Sec. 1053. Power to Punish for Disobedience. In all cases provided for in the preceding section the arbitrator or arbitrators and umpire shall have the same power to punish for disobedience to its processes and orders as is now held by the several superior courts.

Sec. 1054. Taxes of Railroads for County, Municipal, and School Purposes. The returns of railroad companies for purposes of county and municipal and school taxation shall be subject to the same inspection, objection, and assessment by the comptroller-general, and arbitration, as is provided by law for returns of such property for purposes of State taxation.

FILED
JAN 20 1919
JAMES D. MAHER,
CLERK.

IN THE

Supreme Court of the United States

OCTOBER TERM, 1918.

No. 170

UNION TANK LINE COMPANY,
Plaintiff in Error,

against

WILLIAM A. WRIGHT, Comptroller General of Georgia,
Defendant in Error.

Brief for Defendant in Error.

CLIFFORD WALKER,
Attorney General.

WARREN GRICE,
MARK BOLDING,
Counsel for Defendant in Error.

SUPREME COURT OF THE UNITED STATES

UNION TANK LINE, Plaintiff-in-Error, *vs.* WILLIAM A. WRIGHT, Comptroller-General of Georgia.	No. 170. October Term, 1918.

IN ERROR TO THE SUPREME COURT OF THE STATE OF GEORGIA

BRIEF OF COUNSEL FOR DEFENDANT IN ERROR.

The Union Tank Line Company filed in Fulton County Superior Court its petition against William A. Wright, Comptroller-General, wherein it sought to enjoin the Comptroller-General from collecting a franchise tax and an advalorem tax over and above a certain sum it admitted to be due the State as advalorem taxes and which it had paid without prejudice. The court below heard the case on the pleadings and on an agreed statement of facts, and overruled a demurrer to the petition, and under an agreement of counsel that the Judge should dispose of the issues made without a jury, adjudged that the defendant therein be perpetually enjoined; the court holding that the plaintiff therein had no franchise in the State of Georgia subject to taxation under the laws of the State of Georgia; and further held that the method by which the Comptroller-General computed the amount of advalorem tax which was due the State is violative of the Constitution of Georgia and of the 14th Amendment to the Constitution of the United States. The Comptroller-General excepted to the overruling of his

demurrer to the petition and to the other aforesaid ruling. The Supreme Court of Georgia reversed the lower court in its rulings except as to the taxation of the franchise. See Wright vs. Union Tank Line Co., 143 Ga. 765. When the lower court entered a final decree in conformity with the action of the Supreme Court the Plaintiff in Error again excepted. The Supreme Court held to its former rulings.

These rulings are now before this court for review.

The Union Tank Line Company is an equipment comment incorporated in New Jersey for the purpose and with the power of owning cars, known as tank cars specially adapted for transporting oils and is engaged in the business of renting these cars to shippers who desire the use thereof for transporting by the several railroads. The company is not itself engaged in the business of transportation. It simply furnishes cars to shippers, receiving from said shippers a rental on said cars and also receiving from the railroad over which such cars are carried three-fourths of a cent per mile for every mile that the car is moved while on the lines of the railroads. The company has never had an agent or agency in or place of business or officers within this State and does no business in Georgia and exercises no franchise in this State save only as it may be held by the court to do business in this State or to exercise a franchise in this State by virtue of a contract between the Union Tank Line Company and the Standard Oil Company of Kentucky. This contract here referred to was made in New York with a Kentucky corporation by which the Union Tank Line Company was to furnish and did furnish said Oil Company cars to transport oil from its depot in Savannah, Ga., and in Jacksonville, Fla., to such points in or out of the State as the Oil Company may desire to ship oil. Its cars are only temporarily in this State in order to comply with its contract of rental,

as aforesaid, and are not otherwise used with any business being conducted with the Union Tank Line Company in Georgia and are not permanently in this State but pass in and out thereof.

The Union Tank Line Company has not heretofore returned any property for taxation in this State. The average number of cars of the Union Tank Line Co. which were in the State during the years 1907 to 1913, both inclusive were: in 1907, 31; in 1908, 32; in 1909, 56; in 1910, 51; in 1911, 48; in 1912, 49; and in 1913, 57; and it is the insistence of the Union Tank Line Company that it should not be taxed for more than these at a valuation of eight hundred and thirty ($830.00) dollars per car. On the other hand it was and is the insistence of the Comptroller-General that the proper way to ascertain the amount of taxes due was to assign to Georgia such a proportion of the entire valuation of the company's whole number of cars as the mileage in Georgia over which its cars run bears to the entire mileage elsewhere; the Comptroller-General further insisting that he had regularly assessed the property for taxation and duly informed the company that they had twenty days (20) from that date in which to decide whether to accept this valuation or submit to arbitration the question, further stating "unless within twenty (20) days you notify me of your intention to arbitrate and also furnish me with name of your arbitrator, the assessment will stand;" our position being that since no exception was taken within twenty (20) days to the assessment that the company is concluded as to the question of valuation of the property.

Points of Law.

Under the agreed statement of facts (page one and two of the bill of exceptions) the Union Tank Line Company is an equipment company:

"Any person or persons, co-partnership, company or corporation wherever organized or incorporated whose principal business is furnishing or leasing any kind of railroad cars except dining, buffet, chair, parlor, palace or sleeping cars, or in whom the legal title in any such cars is vested, but which are operated or leased or hired to be operated on any railroad in this State shall be deemed an equipment company——"

Code of 1910, §990.

Under the law taxes thereon shall be levied and collected in the same manner as provided in the case of sleeping car companies.

"——every such company shall be required to make returns to the Comptroller-General under the same laws in force in reference to the rolling stock owned by railroads making returns in this State and the assessment of taxes thereon shall be levied and the taxes collected in the same manner as provided in the case of sleeping cars in section 989.

Code of 1910, §990.

The Code declares that sleeping car companies shall be taxed on a mileage basis, that is, its property in this State shall be taxed in the same proportion to the entire value of such sleeping cars that the length of lines in this State over which such cars are run bears to the length of lines of all railroads over which such sleeping cars run.

"Each non-resident person or company whose sleeping cars are run in this State shall be taxed as follows: ascertain the whole number of miles of railroad over which such sleeping cars are run, and ascertain the entire value of all sleeping cars of such person or company, then tax such sleeping cars at the regular tax rate imposed upon the property of

this State in the same proportion to the entire value of such sleeping cars that the length of lines in this State over which such cars are run bears to the length of lines of all railroads over which such sleeping cars run. The returns shall be made to the Comptroller-General by the president, general agent, or the person in control of such cars in this State. The Comptroller-General shall frame such questions as will elicit the information sought, and answers thereto shall be made under oath. If the officers above referred to in control of said sleeping cars shall fail or refuse to answer, under oath the questions so propounded, the Comptroller-General shall obtain the information from such sources as he may, and he shall assess a double tax on such sleeping cars."

Code of 1910, §989.

The Comptroller-General followed the statute in making the assessment (see pages 8 and 9 of the bill of exceptions). This method of ascertaining the amount of property on which the State should assess its taxes has been approved by the Supreme Court of the United States.

"Taking, as a basis of assessment, such proportion of the capital stock of the company as the number of miles over which it ran cars within the State bore to the whole number of miles, in that and other States over which its cars were run, was a just and equitable method of assessment."

Pullman Palace Car Co. vs. *Pennsylvania*, 141 U. S. 18.

See also:

Delaware Railroad Tax case, 85 U. S. 208,
State Railroad Tax case, 92 U. S. 576,
Erie Railroad vs. *Penn.*, 88 U. S. 492.

We concede the proposition that the taxation of the property having its situs outside of the State is a violation of the Federal Constitution, but that is far from saying that a State may not tax personal property within its jurisdiction although not at the place of its domicil.

> "For the purpose of taxation, personal property may be separated from its owner and he may be taxed, on its account at the place where it is, although not the place of his own domicil. There is nothing in the Constitution or laws of the United States which prevents the State from taxing personal property within its jurisdiction, employed in interstate or foreign commerce."
>
> *Pullman Palace Car Co.* vs. *Pennsylvania*, 141 U. S. 18.

See also:

Delaware Railroad Tax case, 85 U. S. 232,
Western Union Telegraph Co. case, 105 U. S. 460,
Glouchester Ferry Co. vs. *Penn.*, 114 U. S. 196,
Western Union Telegraph Co. vs. *Mass.*, 125 U. S. 530,
Marge vs. *Baltimore & Ohio R. R. Co.*, 127 U. S. 117,
Leloup vs. *Port of Mobile*, 127 U. S. 640.

As to tax returned of corporations required by law to be made to the Comptroller-General, he shall carefully scrutinize them and if in his judgment the property embraced therein is returned below its value he shall assess the value within sixty days thereafter from any information he can obtain.

Code of 1910, §1050.

In all cases of assessment and of corrections of returns the officers making such returns shall receive notice

and shall have the privilege within twenty days after such notice to refer the question of true value and true amount as the case may be to arbitrators.

Code of 1910, §1050.

The Code further provides that the Comptroller-General must notify delinquents who fail or refuse to make returns.

> "When the delinquent as provided for under section 1056 refuses or fails to return his property after the notice given, or returns it below what the Comptroller-General deems its value, it shall then be the duty of the Comptroller-General to assess such property for taxation for State, County and Municipal and for school purposes from the best information he can obtain as to its value for each year in default and notify such delinquent of the valuation, which valuation shall be final unless the tax payer raises the question that it is excessive, in which event the further procedure shall be the same as is now provided when the value of returned property is arbitrated."

Code of 1910, §1058.

If the delinquent under section 1056 disputes the taxability of such property he may raise the question by petition in equity in the Superior Court of Fulton County.

Code of 1910, §1060.

The property owner is accorded a hearing by the laws of the State if an opportunity be given to question the validity of the amount of the tax, either before the amount is determined or at a subsequent proceeding for its collection.

Winona, St. Paul Land Co. vs. *Minnesota*, 159 U. S. 526,

Frederick Wyerhausser vs. *Minnesota*, 176 U. S. 549.

Due process of law as applied to proceedings of levy and collection of taxes does not imply nor require the right to such notice and hearing essential to the validity of judgments or judicial tribunals.

Cincinnati, New Orleans & Pacific R. R. vs. *Ky.*, 115 U. S. 321.

As to the meaning of due process of law and the right of notice and of being heard and what constitutes it, see the cases, the brief, the notes and the opinion in L. R. A. as follows:

Kuntz vs. *Sumption*, 2 L. R. A. 655,

Chauvin vs. *Dalton*, 3 L. R. A. 194,

Alman vs. *Mayor of Baltimore*, 11 L. R. A. 224.

Injunctive relief against taxation of railroad property because of the assessment adopted by the State Board of Equalization and the method of arriving at the valuation of such property for tax purposes shall not be given in a Federal Court except in a case of fraud or the clearly shown adoption of a fundamentally wrong principle.

Chicago, B. & O. vs. *Babcock*, 204 U. S. 585.

Provision for review and correction by a Circuit Court of a county of an assessment for taxes made by the board of public works afford such a convenient and adequate remedy for any error of taxation as will preclude an injunction against the collection of tax. Previous notice of a hearing before auditors who make an assessment for taxes is not necessary if there is notice of a decision with a right to appeal to a court and be heard to offer evidence before the valuation of the property for taxation if finally fixed.

Pittsburg & C. Ry. vs. *Board of Pub. Works*, 172 U. S. 32.

In the opinion this language is used; "but it is not important in this case to pursue that course of inquiry, since in matters of taxation it is sufficient that the party assessed should have an opportunity to be heard either before a judicial tribunal or before a board of assessment at some stage of the proceedings.

See also:

Kelly vs. *Pittsburg*, 104 U. S. 78,
Pittsburg etc., R. R. vs. *Cackus*, 154 U. S. 421.

Since the property of the Union Tank Line Company in Georgia is taxable and being transient in its nature the method of applying what is known as the mileage basis in the case of Refrigerator cars has been approved by the Supreme Court of the United States.

Union Ref. Transit Co. vs. *Lynch*, 177 U. S. 151-44, Law Ed. 705.

And the same method of arriving at the value of the property of sleeping car companies having likewise met with the approval of the Supreme Court of the United States.

Pullman Palace Car Co. vs. *Penn.*, 141 U. S. 18.

We must conclude that the Georgia statute is constitutional, and since the State's taxing officer confessedly followed the statute, and the result which he reached was an amount greater than the company thought required to pay it should have resorted to arbitration; but having declined to do so is bound by the action of the Comptroller-General.

Union Transit Co. vs. *Ky.*, 199 U. S. 194,
Am. Ref. Co. vs. *Hall*, 174 U. S. 70,
Union Ref. Co. vs. *Lynch*, 177 U. S. 149.

A necessary incident to government is the imposition of taxes. The State in its sovereign power may impose any tax not repugnant to the Constitution of the United States. It may prescribe not only machinery for the assessment and levying of taxes but methods of arriving at valuations as a basis for taxation, provided such machinery and methods are not repugnant to the Constitution of the United States.

The tax involved in this case is a property tax. Owing to the fact that the property sought to be taxed is constantly changing, according to the exigencies of the business, that is to say, because the cars upon which the tax is sought to be levied are constantly changing in number, going into and leaving the State, this property is not returned and its valuation fixed in the same manner as other kinds of property. For this reason, the State of Georgia has adopted a method of appraisement valuation of the average number of cars habitually used and employed in this State. This method of arriving at the average number of cars and the valuation thereof, for the purposes of taxation, is embodied as statute law of this State, in section 990 and 989 of the Civil Code of 1910.

The lawmaking power of this State did not intend by means of provisions of this section to provide for the taxation of property not situated in this State. The sole purpose of the scheme of appraisement and valuation as set out in these sections was to ascertain and value property located in this State. There is nothing in the record in this case, nor anything in the statutes under consideration, to indicate any intention on the part of the plaintiff in error or the lawmaking power to subject to taxation property not located in this State. Of course, it is recognized that any effort to impose a tax on property located outside of this State would be illegal.

Such a scheme of appraisement and valuation as contained in the above cited section, is not in contravention of any provision of the Constitution of Georgia which provides:

> "All taxation shall be uniform upon the same class of subjects, and *ad valorem* on all property subject to be taxed within the territorial limits of the authority or levying the tax, and shall be levied and collected under general laws."
>
> *Columbus Southern R. R. Co.* vs. *Wright,* 89 Ga. 574.

There can be no doubt that the cars habitually used by the defendant in error in this State are subject to taxation. In fact, that is admitted by the defendant in error for it appears in the record that it has paid a portion of the tax assessed against it on account of the use in this state of such cars.

It appears from the foregoing:

1. That the cars of the Tank Line, as they were habitually used in this State during the years involved, were subject to taxation.

2. That the Legislature has the power to prescribe a method of appraisement and valuation of property such as that used by the Tank Line Company provided such method is not repugnant to the Constitution of this State or the Constitution of the United States.

3. That the Legislature has undertaken to exercise this power by the enactment contained in sections 990 and 989, of the Civil Code.

4. That in making the assessment complained of in this case, the Comptroller-General has followed in all particulars the method laid down in the aforesaid sections of the Code. Said sections herein referred to, were devised and intended solely as a means of appraisement

and valuation of the property of such Tank Company, located in this State, and subject to taxation in this State.

Unquestionably the Comptroller-General in making the assessment was required under the law to follow the method prescribed in these sections. There was no other method provided by law for the return of such property to the Comptroller-General for the purpose of taxation, and no other method by which such property could be assessed for taxation. In making the assessment the Comptroller-General did not resort to any method or scheme of his own, but used the method provided by the statute law of this State. For the reasons above stated, the only question that can arise, except the matter of the failure of the Tank Company to resort to arbitration as provided by law, is the question as to whether or not, sections 990 and 989 of the Code of this State of 1910, are constitutional.

The provisions of the above stated section of the Code have been directly and squarely passed upon, as to their validity and constitutionality, by the Supreme Court of the United States in the case of *Pullman Palace Car Co.* vs. *Pennsylvania*, 141 U. S. 18, where it is said:

> "The validity of this mode of apportioning such a tax is sustained by several decisions of this Court, in cases which came up from the Circuit Court of the United States, and in which, therefore, the jurisdiction of this Court extended to the determination of the whole case, and was not limited, as upon writs of error to the State Court, the question under the Constitution and Laws of the United States."

In this decision, a number of cases are cited to sustain the doctrine announced thereon.

Defendant in error states in his brief "The track mileage in all of the balance of the territory where the Union Tank Line cars are hauled is also required to be given, but not the car mileage. This introduces a method

approved by no decision cited in the opinion of this Court in regard to taxation of the rolling stock of equipment or express companies, or companies where rolling stock is being distributed to the track of the owner." In this statement in his brief the counsel for defendant in error is mistaken, as the very case cited above, Pullman Palace Car case, involved a method of appraisement and valuation in all respects identical with that provided in the Georgia statutes, which is to say a method based upon the length of track traversed and not upon the car mileage. In this case the court says:

> "The mode which the State of Pennsylvania adopted, to ascertain the proportion of the Company's property upon which it should be taxed in that State, was by taking as a basis of assessment such proportion of the capital stock of the Company as the number of miles over which it ran cars within the State bore to the whole number of miles, in that and other states, over which its cars were run. This was a just and equitable method of assessment; and, if it were adopted by all the States through which these cars run, the Company would be assessed upon the whole value of its capital stock, and no more."

Thus it appears that a method identical with that of the Georgia statute, has been upheld by the Supreme Court of the United States, and that the principle involved in this method of appraisement and valuation, has been sustained by the Supreme Court of the United States in a number of cases.

The only attack that is made by the plaintiff in error in this case upon the Georgia Statute, is that in this particular case it appears that the method of appraisement and valuation therein provided had been inaccurate in its results. We submit that no scheme of taxation could be devised which would always produce absolutely correct results. The results in this case may be more

or less inaccurate, but it cannot be said that such inaccuracy amounts to more than a possible over-valuation of the property of the Tank Company located in this State. We submit that this fact does not authorize the holding that the whole scheme for the assessment of taxes on the kind of property herein involved is unconstitutional and void. Such a view would render practically all methods and schemes for the appraisement and valuation of property for the purposes of taxation illegal and void for the reason that all of them in some instances are liable to produce inaccurate, and in some cases, unjust results. As well stated in the opinion of the Supreme Court of Georgia: "To announce that the mileage rule is sound, and then to modify it to the extent of saying that it does not apply, or must be changed, whenever the company shows a disproportion of assets used in the business in different states will in most cases be equivalent to abolishing it as a rule and making it a mere circumstance for consideration by the assessing authorities." The entire pleadings in this case and the briefs for the defendant in error seem to treat the method of appraisement and valuation as employed in the present case as a mere circumstance for consideration by the Comptroller-General, whereas the method is statutory and has the force of a statute in this state. We submit therefore that all of the matters urged by the defendant in error against the validity of the assessment by the tax officer are wholly immaterial in this case, since all of these matters relate merely to inaccuracies in the results arrived at by the statutory scheme of appraisement and valuation of its property located in this State, which amounts to no more than a possible over-valuation of its property located in this State and subject to taxation. The scheme employed is valid, and the assessment has been made according to law, and any inaccuracies therein are merely incidental and, so far as this case is con-

cerned, immaterial. The method of assessment in the present case may bring about some hardship. It is impossible to arrive at mathematical precision in tax valuations. *Love* vs. *Atchison, T. & S. F. Ry.,* 107 C. C. A. 403, 185 Fed. 321. The Legislature has prescribed a method which is considered by our highest tribunal equitable and practicable. It is beside the question to say that the exact valuation could be ascertained by another method, because as to this kind of property, no other method has been provided by law. It would be idle to think of changing the law, and the method of taxation provided therein to suit every individual case. If the contention of the defendant in error is sustained it would mean that legally a vast numbber of tax assessments in this state are invalid, for the same reasons, for a large number of them are unequal and inaccurate when all the circumstances and conditions surrounding them are taken into account.

We submit further that the authorities cited by the defendant in error to sustain their contention that a statute law of this State can be set aside when the tax payer is able to prove that the results of the statutory scheme so far as it relates to his property, are inaccurate, are based upon the idea that the scheme is a mere circumstance for consideration by the assessing officer, which may be changed at will, and not a law of the state, as in this case.

So far as we have been able to find, there is no case decided by the Supreme Court of the United States holding that the method known as the mileage basis of apportionment, or the unit rule has been ever been held invalid or unconstitutional. It has been intimated in some of the opinions that certain erroneous methods of applying the rule might have been held illegal as in the Fargo case in the 193 U. S. where it appears that the total valuation was made up principally from real estate and per-

sonal property not necessarily used in the actual business of the company; or in the Adams Express Company case, 165 U.S., where it was said that a portion of the property of an express company ought to be deducted from the value of its plant as express by the sum total of its stock and bonds before any valuation by mileage could be properly arrived at; or in the Backus case, 154 U. S., where it is said the existence of terminal facilities of an enormous value in one state and not in another might modify, not the rule, but the application of the rule. It was in reference to these matters affecting the application of the rule, that the court said, "It is for the Company to present any special circumstances which may exist, and, failing, to do so, the presumption is that all their property is devoted to their business, which, being so, a fair distribution of its aggregate value would be upon the mileage basis." The showing by the companies here referred to was not made in this case, and it does not appear that all the property of this company is not devoted to its business, nor that it has terminal facilities of an enormous value. Nothing is shown to indicate an erroneous application of the rule.

This statute is either constitutional or unconstitutional. It cannot be constitutional at one time, and unconstitutional at another, or constitutional as applied to some persons and unconstitutional as applied to the Tank Company. If it is unconstitutional as applied to the Tank Company, it is unconstitutional as applied to all equipment companies, as well as sleeping car companies. We submit that whether it is constitutional or not is not a mere question of mathematics, nor is its constitutionality to be determined by mere mathematical proof that its results as to the appraisement and valuation of the property of the Tank Company in this State is numerically inaccurate.

There must be some end to questions of taxation as to litigations in the courts. Such limitation has been prescribed by the Legislature for arbitration within twenty days after the assessment. It is submitted that such regulation is reasonable and that this company is barred from attacking the assessment in this case.

January 9, 1919.

Respectfully submitted,

CLIFFORD WALKER,
Attorney-General, and
WARREN GRICE.
MARK BOLDING,
Counsel for State.
P. O. Address, Atlanta, Ga.

UNION TANK LINE COMPANY *v.* WRIGHT, COMPTROLLER GENERAL OF GEORGIA.

ERROR TO THE SUPREME COURT OF THE STATE OF GEORGIA.

No. 170. Argued January 22, 1919.—Decided March 24, 1919.

A State may tax the movables of a foreign corporation, which are regularly and habitually employed therein, although devoted to interstate commerce. P. 282.

While the valuation must be just, it need not be limited to the mere worth of the articles taken separately, but may include as well the intangible value due to the organic relation of the property in the State to the whole system of which it is part. *Id.*

To meet the difficulties of appraisement where the tangibles constitute part of a going concern operating in many States, and where absolute accuracy is generally impossible, the court has sustained methods producing results approximately correct, for example, the mileage basis in the case of a telegraph company and the average amount of property habitually brought in and carried out by a car company. *Id. Western Union Telegraph Co.* v. *Massachusetts*, 125 U. S. 530; *American Refrigerator Transit Co.* v. *Hall*, 174 U. S. 70.

But if the plan pursued is arbitrary and the consequent valuation grossly excessive, it must be condemned because of conflict with the commerce clause, or the Fourteenth Amendment, or both. *Id.*

A New Jersey company owning many tank cars, rented by shippers, was assessed for those running in and out of Georgia, without regard to and much in excess of their real value, upon a track-mileage basis, *i. e.*, in an amount bearing the same ratio to the value of all its cars and other personal property as the ratio of the miles of railroad

over which the cars were run in Georgia to the total miles over which all were run, there and elsewhere. *Held*, that the rule adopted had no necessary relation to the real value in Georgia, and that the tax was void. P. 283. *Pullman's Palace Car Co.* v. *Pennsylvania*, 141 U. S. 18, distinguished and limited.

What is said in an opinion upon a point not raised or properly involved cannot control in a subsequent case where the very point is presented for decision. P. 286.

143 Georgia, 765; 146 *id.*, 489, reversed.

THE case is stated in the opinion.

Mr. Douglas Campbell for plaintiff in error.

Mr. Clifford Walker, Attorney General of the State of Georgia, for defendant in error, submitted. *Mr. Warren Grice* and *Mr. Mark Bolding* were on the brief.

MR. JUSTICE MCREYNOLDS delivered the opinion of the court.

This cause requires us to consider the power of a State to lay and collect taxes upon instrumentalities of interstate commerce which move both within and without its jurisdiction.

Union Tank Line—plaintiff in error—an equipment company incorporated in New Jersey which has never carried on business or had an office in Georgia, owns twelve thousand tank cars suitable for transporting oil over railroads and rents them to shippers at agreed rates, based on size and capacity. The roads over which they move also pay therefor stipulated compensation. Under definite contract certain of these cars were furnished to the Standard Oil Company of Kentucky and all of those which came into Georgia were being operated by the Oil Company under such agreement. They were not permanently within that State but passed "in and out."

March 16, 1914, the Tank Line made the following tax return to the Comptroller General for 1913—

Name of company	Union Tank Line
Value of real estate owned by company in or out of Georgia	None
Number of miles of R. R. lines in Georgia over which . . cars are run	6976.5
Total value of . . cars and . . other personal property [in Ga. & elsewhere]	$10,518,333.16
Value franchise [in Georgia]	No franchise
Total number of miles R. R. lines over which . . cars are run [in Ga. & elsewhere]	251,999
Total value of property taxable in Georgia	$47,310.00
Union Tank Line Company had an average of 57 tank cars in Georgia during 1913 which at a value of $830 per car equals	$47,310.00

Defendant in error expressly admitted that the average number of cars in Georgia during 1913 was fifty-seven, the value of each being $830—total $47,310; that the owner had paid into the state treasury as taxes the full amount required on such valuation and during that year had no other property in the State. Acting upon information contained in return above quoted, the Comptroller General assessed the Tank Line's property for 1913 at $291,196, its franchise at $27,685; and demanded payment. In explanation of this action he wrote to it as follows:

"As to the return filed, you have furnished the data desired, but have made an error in the application of same. After giving the mileage for the Company everywhere

and for Georgia, you then go ahead and assign 57 tank cars for this State and value them at $830 each, making the total for Georgia $47,310. This is an incorrect method. If you were to be allowed to merely assign so many cars to the State for taxation there would be no need for the mileage figures to be furnished. The valuation to be assigned to Georgia must be in the same proportion to the valuation for the entire company, as the mileage in Georgia bears to the entire mileage everywhere. . . . Or to work it out by percentage instead of proportion: 6,976.5 the Georgia mileage, is 2.76846 per cent. of 251,999, the entire mileage. Georgia is therefore entitled to 2.76846 per cent. of the entire valuation. This per cent. of $10,518,333 is $291,195.84, or the same sum arrived at by proportion, if we call the 84 cents an even dollar. . . . A franchise value should also be returned. And whatever the valuation you place on the franchise for the entire country, 2.76846 per cent. of same must be assigned to Georgia. Thus, if you should value your franchise at $1,000,000, the franchise value to be assigned to Georgia would be $27,685."

"The valuation for Georgia was determined by taking 2.76846 per cent. of the valuation you gave for the entire company, exclusive of franchise. The 2.76846 per cent. is the ratio the Georgia mileage bears to the entire mileage, as explained in a previous letter. The franchise value was obtained by placing your franchise for the entire country at an even million dollars and giving Georgia 2.76846 per cent. thereof."

Thereupon, plaintiff in error instituted this proceeding in Fulton County Superior Court alleging invalidity of the assessment, that to enforce the tax would violate the Fourteenth Amendment, and asked appropriate relief. The cause was tried upon pleadings and agreed statement of facts. Among other things, the parties stipulated:

"On April 7, 1914, when the defendant entered an as-

sessment in his office of property and franchise of the plaintiff as shown hereinbefore, he had no other information for any of the years 1907 to 1914 inclusive than was contained in the said return filed by the plaintiff on March 16, 1914, and embraced in this statement and which was refused by the defendant, and did not know what cars defendant had had in Georgia during any of said named years nor did he ascertain the value of such cars, but his action was taken on such information hereinbefore shown; and that the assessment so entered by the defendant in his office against the plaintiff's property during said period for each of said years embraces the valuation of about three hundred cars in excess of what the plaintiff actually had in the State of Georgia, during said years of the approximate value of $250,000.00 each year; and that the true value of a tank car is about eight hundred and thirty ($830.00) dollars per car.

"That for the year 1914 the assessment entered against plaintiff by defendant covered the value of at least three hundred and fifty cars in excess of the number of cars plaintiff actually had in the State of Georgia for the time said tax was assessed.

"That defendant in entering said assessment never undertook to ascertain the actual property of plaintiff's located in the State of Georgia during the said years or to assess its property at its real value for taxation, otherwise than by simply ascertaining the percentage of its entire property shown by the ratio of the railroad traversed by its equipment in Georgia and the railroad mileage traversed by its equipment everywhere as shown by its said return filed on March 16, 1914."

The trial court adjudged the assessment good as to both franchise and physical property. The Supreme Court held no taxable franchise existed, but that the physical property had been assessed as required by statutes not in conflict with either state or Federal Constitution. 143

Georgia, 765, 769, 771, 773; 146 Georgia, 489. It said: "The case relates to two matters, namely: a tax assessment against tangible property of the company; and second, a claim of right to assess a franchise tax. . . . The effort was to tax property in this State, and in doing so to apply the statute designed as a rule to ascertain the property so coming into the State and its proper valuation." After quoting §§ 989, 990 and 1031, Civil Code of Georgia, copied in the margin,[1] the opinion con-

[1] Civil Code of Georgia.

Sec. 989. "Each non-resident person or company whose sleeping-cars are run in this State shall be taxed as follows: Ascertain the whole number of miles of railroad over which such sleeping-cars are run, and ascertain the entire value of all sleeping-cars of such person or company, then tax such sleeping-cars at the regular tax rate imposed upon the property of this State in the same proportion to the entire value of such sleeping-cars that the length of lines in this State over which such cars are run bears to the length of lines of all railroads over which such sleeping-cars are run. The returns shall be made to the comptroller-general by the president, general agent, or person in control of such cars in this State. The comptroller-general shall frame such questions as will elicit the information sought, and answers thereto shall be made under oath. If the officers above referred to in the control of said sleeping-cars shall fail or refuse to answer, under oath, the questions so propounded, the comptroller-general shall obtain the information from such sources as he may, and he shall assess a double tax on such sleeping-cars. If the taxes herein provided for are not paid, the comptroller-general shall issue executions against the owners of such cars, which may be levied by the sheriff of any county of this State upon the sleeping-car or cars of the owner who has failed to pay the taxes."

Sec. 990. "Any person or persons, copartnership, company or corporation wherever organized or incorporated, whose principal business is furnishing or leasing any kind of railroad cars except dining, buffet, chair, parlor, palace, or sleeping-cars, or in whom the legal title in any such cars is vested, but which are operated, or leased, or hired to be operated on any railroads in this State, shall be deemed an equipment company. Every such company shall be required to make returns to the comptroller-general under the same laws of force in reference to the rolling stock owned by the railroads making returns in this State, and the assessment of taxes thereon shall be levied and the taxes col-

tinues—"The several code sections embody the statutory scheme for taxing cars of equipment companies whose cars are handled over the railroads in this State. Owing to the nature of the business, it is difficult to ascertain the number of cars of equipment companies that come into this State and designate the identity of each car or its value. The purpose of the statute is to provide a reasonable method for determining the fact that cars come into this State and the values thereof, to the end that the equipment companies allowing their cars to come into this State may bear their just proportion of taxes leviable in this State. The scheme of the statute is what is sometimes called the track-mileage basis of apportionment, or what in a more general way is termed the unit rule. The comptroller-general followed the statute. The unit rule has been upheld by the Supreme Court of the United States, in regard to railroads, telegraph companies, and sleeping-car companies. *Kentucky Railroad Tax Cases*, 115 U. S. 321; *Western Union Telegraph Company* v. *Massachusetts*, 125 U. S. 530; *Pullman's Palace Car Co.* v. *Pennsylvania*, 141 U. S. 18. And this principle of average has been approved in regard to refrigerator-cars. *American Refrigerator Transit Co.* v. *Hall*, 174 U. S. 70; *Union Refrigerator Transit Co.* v. *Lynch*, 177 U. S. 149. It has even been held that the unit rule of valuation could properly be applied to the valuation of property of express companies within a certain State, though there was no

lected in the same manner as provided in the case of sleeping-cars in section 989."

Sec. 1031. "Railroad companies operating railroads lying partly in this State and partly in other States shall be taxed as to the rolling stock thereof and other personal property appurtenant thereto, and which is not permanently located in any of the States through which said railroads pass, on so much of the whole value of rolling stock and personal property as is proportional to the length of the railroad in this State, without regard to the location of the head office of such railroad companies."

physical connection with property beyond the State. . . . It seems to us, therefore, that the case falls within the rule laid down by the Supreme Court of the United States, as above mentioned, and that there are no such circumstances as to bring it within the ruling made in *Fargo* v. *Hart*, 193 U. S. 490."

A State may not tax property belonging to a foreign corporation which has never come within its borders—to do so under any formula would violate the due process clause of the Fourteenth Amendment. In so far, however, as movables are regularly and habitually used and employed therein, they may be taxed by the State according to their fair value along with other property subject to its jurisdiction, although devoted to interstate commerce. While the valuation must be just it need not be limited to mere worth of the articles considered separately but may include as well "the intangible value due to what we have called the organic relation of the property in the State to the whole system." How to appraise them fairly when the tangibles constitute part of a going concern operating in many States often presents grave difficulties; and absolute accuracy is generally impossible. We have accordingly sustained methods of appraisement producing results approximately correct—for example, the mileage basis in case of a telegraph company (*Western Union Telegraph Co.* v. *Massachusetts*), and the average amount of property habitually brought in and carried out by a car company (*American Refrigerator Transit Co.* v. *Hall*). But if the plan pursued is arbitrary and the consequent valuation grossly excessive it must be condemned because of conflict with the commerce clause or the Fourteenth Amendment or both. *Western Union Telegraph Co.* v. *Massachusetts*, 125 U. S. 530; *Marye* v. *Baltimore & Ohio R. R. Co.*, 127 U. S. 117; *Pullman's Palace Car Co.* v. *Pennsylvania*, 141 U. S. 18, 26; *Adams Express Co.* v. *Ohio*, 165 U. S. 194; *s. c.*, 166 U. S. 185; *American Re-*

frigerator Transit Co. v. *Hall*, 174 U. S. 70; *Union Refrigerator Transit Co.* v. *Lynch*, 177 U. S. 149; *Fargo* v. *Hart*, 193 U. S. 490; *Cudahy Packing Co.* v. *Minnesota*, 246 U. S. 450, 453.

In the present case the Comptroller General made no effort to assess according to real value or otherwise than upon the ratio which miles of railroad in Georgia over which the cars moved bore to total mileage so traversed in all States. Real values—the essential aim—of property within a State cannot be ascertained with even approximate accuracy by such process; the rule adopted has no necessary relation thereto. During a year two or three cars might pass over every mile of railroad in one State while hundreds constantly employed in another moved over lines of less total length. Fifty-seven was the average number of cars within Georgia during 1913 and each had a "true" value of $830. Thus the total there subject to taxation amounted to $47,310—the challenged assessment specified $291,196.

We think plaintiff in error's property was appraised according to an arbitrary method which produced results wholly unreasonable and that to permit enforcement of the proposed tax would deprive it of property without due process of law and also unduly burden interstate commerce.

Pullman's Palace Car Co. v. *Pennsylvania, supra*, relied on by defendant in error, contains the following passage which seems to uphold the Georgia rule—"The mode which the State of Pennsylvania adopted, to ascertain the proportion of the company's property upon which it should be taxed in that State, was by taking as a basis of assessment such proportion of the capital stock of the company as the number of miles over which it ran cars within the State bore to the whole number of miles, in that and other States, over which its cars were run. This was a just and equitable method of assessment; and, if

it were adopted by all the States through which these cars ran, the company would be assessed upon the whole value of its capital stock, and no more." But the point therein spoken of was unnecessary to determination of the cause; and so far as the quoted passage sanctions the specified rule for ascertaining values as generally appropriate, just, unobjectionable and productive of conclusive results, it must be regarded as *obiter dictum*, and we cannot now approve or follow it.

Reference to the original record upon which that case came here will aid in understanding the exact issues presented. Pennsylvania demanded taxes of the Pullman Company, an Illinois corporation, for the years 1870 to 1880, upon such portion of its capital stock as total miles of railroad in Pennsylvania over which its cars moved bore to like total in all States. No statute prescribed the method of valuation; it had been adopted by executive officers. The Court of Common Pleas declared: "On the facts defendant claims that no part of its capital stock is invested in this State. The argument is that its cars are personal property, and, as they are not permanently located in this State, but pass into, through, and out of it, this personal property has no taxable situs in Pennsylvania, and could not be taxed specifically in any given locality; and therefore, it is contended, as the tax on capital stock is a tax on the property in which the capital is invested, the latter cannot be taxed. . . . We hold, therefore, that the proportion of the capital stock of the defendant invested and used in Pennsylvania is taxable under these acts, and that the amount of the tax may be properly ascertained by taking as a basis the proportion which the number of miles operated by defendant in this State bears to the whole number of miles operated by it, without regard to the question where any particular car or cars were used; . . . The defendant is liable to tax on the proportion of its capital stock invested in this State,

as represented by the coaches and cars owned and used by it here. . . . Determining the amount of the tax on the principle above stated, it is as follows: Tax for years 1870 to 1880, inclusive, $16,321.89." The Supreme Court affirmed this view, saying: "While the tax on the capital stock of the company 'is a tax on its property and assets,' yet the capital stock of a company and its property and assets are not identical. The coaches of the company are its property. They are operated within this State. They are daily passing from one end of the State to the other. They are used in performing the functions for which the corporation was created. The fact that they also are operated in other States cannot wholly exempt them from taxation here. It reduces the value of property in this State justly subject to taxation here. This was recognized in the court below, and we think the [proportion] preference was fixed according to a just and equitable rule."

In 1870 the Pullman Company's capital stock amounted to three million dollars, in 1880 it had grown to six million; all cars actually owned by the company (leased ones not included) during 1871, numbered 241, and in 1880, 472, their total value being $4,334,000, and $8,588,000 respectively; one hundred cars were operated within Pennsylvania during each of the eleven years; total miles of track everywhere passed over by the company cars during 1880 amounted to 57,099, within Pennsylvania 5,127, and these figures adequately represent the proportion for other years: total tax held due for the eleven years amounted to $16,321.89. While the record does not disclose the precise valuations upon which taxes were computed, enough does appear to show that they were far below (perhaps not one-third) the actual worth of a hundred cars.

The company demanded complete exemption upon the ground that its cars were moving in interstate commerce

and had no taxable situs in Pennsylvania. The appraisement was not challenged as excessive; if the property was taxable in Pennsylvania the rule adopted may have been decidedly favorable to the owner and the assessment a moderate one. Having failed to challenge amount of the assessment, the company could not well complain of the rule under which this was fixed. In such circumstances reasonableness of the rule was not really in question and what was said of it cannot control here where the very point is presented for decision. *Cohens* v. *Virginia*, 6 Wheat. 264, 399; *McCormick Machine Co.* v. *Aultman*, 169 U. S. 606, 611. See also *Adams Express Co.* v. *Ohio*, *supra*.

In other opinions of this court cited below to support the conclusion there reached we upheld the power of a State to tax property actually within its jurisdiction upon a fair valuation considered as part of a going concern—they give no sanction to arbitrary and inflated valuations. Taxes must follow realities, not mere deductions from inadequate or irrelevant data.

In *Fargo* v. *Hart*, *supra*, we condemned an assessment ostensibly proportioned to mileage where property without the State and unnecessary to the Express Company's actual business had been included; and we pointed out that under no formula can a State tax things wholly beyond its jurisdiction.

The same considerations which establish invalidity of the assessment of plaintiff in error's property for 1913 apply to like ones made by the Comptroller General for all other years in question.

Judgment of the court below must be reversed and the cause remanded for further proceedings not inconsistent with this opinion.

Reversed and remanded.

MR. JUSTICE DAY, in view of the undisputed facts of this case, concurs in the result.

MR. JUSTICE PITNEY, with whom concurred MR. JUSTICE BRANDEIS and MR. JUSTICE CLARKE, dissenting.

During the period in controversy the Union Tank Line, plaintiff in error, a New Jersey corporation, was the owner of many tank cars, aggregating in value more than $10,000,000, and was engaged in the business of renting them out to be employed in transporting oil and similar fluids over railroads throughout the United States extending to more than 250,000 miles. In the course of its business it made a contract with the Standard Oil Company of Kentucky to furnish to that corporation cars for use in the transportation of oils and like fluids from depots at Savannah, Georgia, and Jacksonville, Florida. The oils were brought to those depots chiefly in vessels by sea, and were shipped thence in the Tank Line cars to various destinations within and without the State of Georgia; plaintiff in error being compensated in part by rentals paid by the Standard Oil Company, based on size and capacity of cars, and in part by payments received from the railroad companies over whose lines the cars were run; those companies, in lieu of providing their own tank cars, paying to plaintiff in error three-fourths of a cent per mile per car for the car movements.

Under the provisions of the Georgia statutes (Civil Code, §§ 989, 990, 1031), property taxes were imposed upon plaintiff in error by reason of the habitual use and employment of its rolling stock within that State, based upon a valuation not limited to the value of the tank cars as separate chattels, but considering their value as a part of the entire system of cars owned and operated by plaintiff in error, and regarding these as a part of the equipment of the railroads over which they ran. Thus, it appearing from a return made by the Tank Line to the Comptroller General for the year 1913 that the number of miles of railroad lines in Georgia over which its cars

were run was 6,976.5, and the total number of miles of railroad lines over which its cars were run in Georgia and elsewhere was 251,999, and that the total value of its cars and other personal property in Georgia and elsewhere was $10,518,333.16, the Comptroller General assigned to the State of Georgia for taxation the same proportion of the property value of the system of cars that the Georgia rail mileage bore to the total mileage. This gave a valuation of $291,195.84, whereas plaintiff in error had returned that during the same year it had an average of only 57 tank cars in Georgia, amounting, at a valuation of $830 per car, to $47,310.

The Supreme Court of Georgia sustained the tax on the authority of numerous decisions of this court, cited for the purpose. 143 Georgia, 765; 146 Georgia, 489. This court reverses the judgment, and holds the taxing law unconstitutional, upon reasoning to which I am unable to yield assent.

In my opinion the Georgia system of taxing movable property of this character when habitually employed in the State, and the decision of the state Supreme Court sustaining the particular taxes in question, are based upon a correct view of the powers of the State under the Federal Constitution, and are in entire harmony with principles laid down in authoritative decisions of this court which have remained unchallenged for more than a quarter of a century. *Western Union Telegraph Co.* v. *Massachusetts*, 125 U. S. 530, 552; *Maryc* v. *Baltimore & Ohio R. R. Co.*, 127 U. S. 117, 123; *Pullman's Palace Car Co.* v. *Pennsylvania*, 141 U. S. 18, 22, 26, *et seq.*; *Cleveland &c., Ry. Co.* v. *Backus*, 154 U. S. 439, 445; *Western Union Telegraph Co.* v. *Taggart*, 163 U. S. 1, 14; *Adams Express Co.* v. *Ohio*, 165 U. S. 194, 221; *s. c.* 166 U. S. 185; *American Refrigerator Transit Co.* v. *Hall*, 174 U. S. 70, 75, *et seq.*; *Union Refrigerator Transit Co.* v. *Lynch*, 177 U. S. 149, 152; *Cudahy Packing Co.* v. *Minnesota*, 246 U. S. 450, 453.

275. PITNEY, BRANDEIS, and CLARKE, JJ., dissenting.

The case presents no question of taxing a foreign corporation with respect to personal property that never has come within the borders of the State. According to the agreed state of facts and the petition of the Union Tank Line which is to be read with it, any and all cars of the company were liable to be used indiscriminately, as occasion required, in the transportation of oil within the State of Georgia, and there is nothing to show how many were so used during either of the taxing years in question. Fifty-seven cars simply represents the average number within the State at one and the same time within the year, and is not representative of the number of cars used in the State during the year. This court has declared that a State may lay hold of the average habitual use of movable railroad equipment as a basis of taxation (*Marye* v. *Baltimore & Ohio R. R. Co.*, 127 U. S. 117, 123); but there is nothing in the Constitution of the United States to confine the State to that particular method. It is but a method of approximation. Nor is the State obliged to ignore the special value that rolling stock has because of its organic relation to, and its customary use in connection with, the railroad tracks upon which it runs. Although the equipment be held in separate ownership, it may be regarded in fact as an appurtenance of the railroad and valued in that relation. It is admitted that the revenue derived by plaintiff in error from the use of its cars is in part paid by the railroad companies and proportioned to the mileage covered by the run of the cars.

The opinion of this court recognizes that plaintiff in error, because its tank cars are regularly and habitually used and employed in the State of Georgia, is taxable according to their fair value along with other property subject to the jurisdiction of the State, although they are devoted to interstate commerce; that while the valuation must be just it need not be limited to the mere value of the cars considered separately, but may include also the

special value attributable to their organic relation to the entire system; that fair appraisal, in a case like this, where the cars constitute part of a system operating in many States, is a matter of serious difficulty, but that absolute accuracy usually is impossible and therefore is not required by the Constitution; and it seems to be intimated that a valuation based upon the aggregate car mileage within the State during the taxable year would be permissible. But, even assuming that such a basis could be adopted without in effect regulating interstate commerce by varying the burden of taxation in direct proportion to the volume of such commerce, it still is obvious that a valuation according to aggregate car mileage would virtually ignore the particular value due to the relation of the cars to the rail system, would in effect be equivalent to a valuation according to average use, and would be open to the same objection, viz., that its ascertainment would lie wholly within the breast of the taxpayer. For, if the state authorities were required to keep a check either upon the average use or the aggregate mileage covered by the movements of rolling stock within the State, and to supplement this with observations in other States in order to arrive at the due proportion, the cost of administration easily might consume the tax.

It is because of difficulties such as these that so many of the States have resorted to track mileage—readily ascertained and little subject to change—as an equitable method of ascertaining the proportionate value taxable by a single State, out of the aggregate value of the movables of an equipment company that does business in several States.

This method was very clearly sustained by this court in *Pullman's Palace Car Co.* v. *Pennsylvania*, 141 U. S. 18, 26, a case decided in the year 1891, followed repeatedly, and never questioned in the least until now. The tax laws of the State of Georgia, and doubtless of many other

States, have been based upon that decision, and I regard it as most unfortunate that at this late date its authority should be overthrown.

The Pullman Company was a corporation of the State of Illinois, having its principal office in Chicago, and its business was to furnish sleeping coaches and parlor and dining cars to various railroad companies for use as a part of the equipment of passenger trains running in interstate commerce; the railroad companies collecting the usual passenger fares and the Pullman Company separate charges for seats and berths. The company was subjected by the State of Pennsylvania to a tax upon a part of its capital stock bearing the same proportion to the whole as the number of miles of railroad over which its cars were run in Pennsylvania bore to the whole number of miles in that and other States over which they were run. The Pullman Company objected to the taxation of any part of its capital stock by the State of Pennsylvania by reason of its running its cars through that State in the course of their employment in interstate transportation of passengers; and it is obvious that unless the tax was sustainable as being in substance and effect a tax upon property of the company no greater than that which the State had a right to impose it was invalid because amounting in its effect to a burden upon interstate commerce. It was from this point of view that the court tested and sustained the tax, as the following excerpts from the opinion will show. After declaring that the legislative power of every State extends to all property within its borders; that for purposes of taxation personal property may be separated from its owner and the owner taxed on account of it at the place where it is located, although he is not a citizen or resident of the State which imposes it; and that there is nothing in the Constitution or laws of the United States to prevent a State from taxing personal property employed in interstate or foreign commerce

like other personal property within its jurisdiction; the court, speaking by Mr. Justice Gray, proceeded to say (p. 25): "Much reliance is also placed by the plaintiff in error upon the cases in which this court has decided that citizens or corporations of one State cannot be taxed by another State for a license or privilege to carry on interstate or foreign commerce within its limits. But in each of those cases the tax was not upon the property employed in the business, but upon the right to carry on the business at all, and was therefore held to impose a direct burden upon the commerce itself. . . . The tax now in question is not a license tax or a privilege tax; it is not a tax on business or occupation; it is not a tax on, or because of, the transportation, or the right of transit, of persons or property through the State to other States or countries. . . . The tax on the capital of the corporation, on account of its property within the State, is, in substance and effect, a tax on that property. . . . The cars of this company within the State of Pennsylvania are employed in interstate commerce; but their being so employed does not exempt them from taxation by the State; and the State has not taxed them because of their being so employed, but because of their being within its territory and jurisdiction. The cars were continuously and permanently employed in going to and fro upon certain routes of travel. . . . [p. 26] The fact that, instead of stopping at the state boundary, they cross that boundary in going out and coming back, cannot affect the power of the State to levy a tax upon them. . . . The route over which the cars travel extending beyond the limits of the State, particular cars may not remain within the State; but the company has at all times substantially the same number of cars within the State, and continuously and constantly uses there a portion of its property; and it is distinctly found, as matter of fact, that the company continuously, throughout the periods

for which these taxes were levied, carried on business in Pennsylvania, and had about one hundred cars within the State.

"*The mode which the State of Pennsylvania adopted, to ascertain the proportion of the company's property upon which it should be taxed in that State, was by taking as a basis of assessment such proportion of the capital stock of the company as the number of miles over which it ran cars within the State bore to the whole number of miles, in that and other States, over which its cars were run. This was a just and equitable method of assessment; and, if it were adopted by all the States through which these cars ran, the company would be assessed upon the whole value of its capital stock, and no more.* [Italics mine.] The validity of this mode of apportioning such a tax is sustained by several decisions of this court," etc.

It was upon this decision, among others, that the Supreme Court of Georgia relied as authority for its judgment. I cannot agree that any part of what I have quoted—least of all the italicized clause which relates to the apportionment of the tax according to track mileage—was *obiter dictum* or unnecessary for the decision. It was necessary—certainly so this court deemed it—that the disputed tax be vindicated as a property tax in order to relieve it from the criticism that it was an unwarranted interference with interstate commerce; and it could not be sustained as a property tax unless the method of apportionment was fair and equitable. The authority of the case cannot properly be overthrown by showing, even if it could be shown, that the court might have reached the same result upon some other ground than that which in truth it adopted as the basis of its decision. And it seems to me that a considered judgment of this court upon a constitutional question affecting the taxing powers of the States, long acted upon as a guide to state legislation upon this important and difficult matter, ought not to be

set aside without more cogent reasons than any that are here adduced. Certainly the fact that the established rule of taxation may operate with hardship or even with apparent injustice in a particular case is not sufficient to condemn it.

The decision referred to, *Pullman's Palace Car Co.* v. *Pennsylvania*, *supra*, has always been regarded as a leading case, and cited with uniform approval in repeated decisions of this court: not only upon the point that property employed in interstate commerce, and in the ordinary use of it situate sometimes within and sometimes without a State, is subject to state taxation without regard to the place of the owner's domicile; but also and especially in support of the proposition that the mileage basis of apportionment as between the different States may be resorted to in order to determine what tax each State shall lay upon rolling stock used upon interstate railroads, just as it often is resorted to in apportioning the tax upon a railroad as between different taxing districts in the same State.

The reasoning of the case upon the point now in controversy has never heretofore been regarded as *obiter dictum*. On the contrary, it was cited in support of the mileage basis of apportionment for the taxation of a railroad in *Pittsburgh, &c. Ry. Co.* v. *Backus*, 154 U. S. 421, 431; and, in *Adams Express Co.* v. *Ohio*, 165 U. S. 194, 221, to sustain a mileage apportionment with respect to interstate express companies, notwithstanding the absence of physical unity, *s. c.*, 166 U. S. 185. It was quoted from extensively in *American Refrigerator Transit Co.* v. *Hall*, 174 U. S. 70, 75–76, as authority for the apportionment of taxes upon rolling stock according to the track mileage within and without the State; the very part of the opinion now held to be *dictum* being included in the quotation. See also *Western Union Telegraph Co.* v. *Taggart*, 163 U. S. 1, 14, 21; *Union Refrigerator Transit Co.* v. *Lynch*, 177 U. S. 149, 152; *Union Refrigerator Transit Co.* v. *Kentucky*,

199 U. S. 194, 206; *Galveston, Harrisburg & San Antonio Ry. Co.* v. *Texas*, 210 U. S. 217, 225; *Pullman Co.* v. *Kansas*, 216 U. S. 56, 63–64; *Louisville & Nashville R. R. Co.* v. *Greene*, 244 U. S. 522, 548; *Cudahy Packing Co.* v. *Minnesota*, 246 U. S. 450, 453. In *Fargo* v. *Hart*, 193 U. S. 490, 499, the court recognized the authority of *Pullman's Palace Car Co.* v. *Pennsylvania* as supporting the acknowledged doctrine of organic unity and the reasonableness and constitutionality of the mileage proportion, but found in the particular case an exception to the rule.

I can see nothing arbitrary or unreasonable in the general rule of mileage apportionment adopted by the State of Georgia, upon the authority of these repeated decisions of this court, for the taxation of railroad cars and other equipment habitually operated on lines extending within and without the State, and hence am convinced that the statute is not repugnant to the Federal Constitution. If, for any reason that does not appear, the rule operated unfairly in this particular case, and imposed an unjust and inequitable burden of taxation upon plaintiff in error, it was incumbent upon plaintiff in error to show this by calling for an arbitration upon the question of true value, as permitted by the Georgia statutes (Civil Code, §§ 1045–1046, 1050–1054), or by some appropriate proceeding for relief against the excessive part of the taxes. Having failed to do this although properly notified, it cannot in justice be heard to say that the valuation of its property, made according to a statutory rule that in its general application is just and reasonable, is in the particular case so excessive as to amount to a deprivation of property without due process of law, or an undue burden upon interstate commerce.

MR. JUSTICE BRANDEIS and MR. JUSTICE CLARKE concur in this dissent.